HOUSE OF COMMONS
CANADA

SPECIAL COMMITTEE ON REGULATORY REFORM

REPORT

DECEMBER 1980

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FIRST SESSION OF THE THIRTY-SECOND PARLIAMENT, 1980

DECEMBER 1980

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Recommendations

1: We recommend that each department and agency develop its own system for consultation with the private sector. Each system should provide for early and effective consultation before any regulatory initiative is undertaken.

2: We recommend that any system for consultation developed by a department or agency include the establishment of a public list of interested persons who will be notified by the department or agency with respect to regulatory initiatives.

3: We recommend that each department and agency publish twice a year a regulatory agenda giving notice of upcoming regulatory initiatives.

4: We recommend that an index be compiled of all agendas published by government departments and agencies.

5: We recommend that departments and agencies prepublish regulations whenever appropriate.

6: We recommend that all proposed regulations be subjected to an appropriate impact assessment to be performed by the sponsoring department or agency.

7: We recommend that each department and agency review immediately its regulatory statutes and regulations to:

(a) identify unnecessary and outdated regulatory statutes and regulations; and

(b) set a schedule for more detailed review and further action.

8: We recommend that departments and agencies ensure that all their regulatory activities are evaluated periodically under the program evaluation system administered by the Office of the Comptroller General.

9: We recommend that the annual reports of departments and agencies include:

(a) a summary of the progress that has been made on regulatory reform, including the reduction of paperburden, initiation of better service to the public, and expansion of notice and consultation procedures;

(b) a summary of major regulatory initiatives undertaken in the past year;

(c) an identification of major regulatory initiatives contemplated;

(d) an identification of program evaluations completed in the past year; and

(e) a schedule of future program evaluations.

10: We recommend that,

(a) amendments be made to the *National Transportation Act* and the *Broadcasting Act* so that Cabinet can issue binding policy directives to the Canadian Transport Commission and the Canadian Radio-television and Telecommunications Commission; and

(b) the Government study the feasibility of extending policy directives to other federal regulatory agencies.

11: We recommend that the process of Cabinet appeals from decisions of the Canadian Radio-television and Telecommunications Commission and the Canadian Transport Commission be retained. Cabinet appeals from decisions of other federal regulatory agencies should not be instituted until studies are conducted to consider their feasibility.

12: We recommend that the following minimum procedural requirements be established for appeals to Cabinet from decisions of regulatory agencies:

(a) notification of the appeal be given by the petitioner or by Cabinet, if acting on its own motion, to all parties of record at the agency hearing;

(b) interested persons be given an opportunity to make submissions to Cabinet according to a timetable that it will set and communicate; and

(c) if the decision of the regulatory agency is not affirmed, the Cabinet decision include written reasons.

13: We recommend that, in appointing members to regulatory agencies, there be a consultative process that includes the following:

(a) consultation with the Chairman of the regulatory agency;

(b) preparation of a job description for the position;

(c) public notice of the vacancy and the means by which representations can be made; and

(d) establishment of a talent bank containing the names of qualified persons who could be considered for appointment to regulatory agencies.

14: We recommend that regulatory agencies benefit from balanced regional representation and conduct their affairs so that, collectively, members of the agencies can better appreciate regional as well as national implications of their decisions.

15: We recommend that the terms and conditions of employment for appointees to federal regulatory agencies be the subject of a separate study.

16: We recommend that each federal regulatory agency commence a proceeding through which each will establish rules of practice and procedure that are most appropriate to its proceedings.

17: We recommend that, when necessary parliamentary reforms are achieved, the Standing Committees of the House of Commons be authorized to perform the following functions on their own initiative without reference from the House:

(a) monitor the regulatory processes of federal departments and agencies;

(b) review the subject matter of new subordinate legislation as to policy or merits; and

(c) review specific regulatory activities of federal departments and agencies utilizing program evaluation reports.

18: We recommend that a Special Committee on Government Regulation be established to function until required parliamentary reforms are implemented.

19: We recommend that the Special Committee on Government Regulation monitor the Government's progress in implementing regulatory reform and oversee the regulatory activities and processes of federal departments and agencies. In addition, it must:

(a) in each year of its operation, review and report on the policy or merits of not less than three sets of regulations;

(b) in each year of its operation after the first year, review and report on two regulatory programs of the Government, utilizing as the basis for its assessment, special program evaluation reports to be prepared by the Government in accordance with the Committee's request; and

(c) report on the following matters:

(i) the Committee's experience with functions that it has performed relating to federal regulatory activity;

(ii) the Committee's experience with factors affecting its operation including staffing, size of membership, and restrictions on substitution of members;

(iii) methods to facilitate parliamentary review of federal regulation in general; and

(iv) the progress made by the Government in implementing regulatory reform.

20: We recommend that the Special House Committee on Government Regulation:

(a) be comprised of not more than ten members and that no substitution of members be allowed without motion of the Committee;

(b) be expanded by not more than three *ex officio* members, such members to be selected from the appropriate standing committee, and to serve in connection with the review on policy or merits of regulations and review of regulatory programs (functions (a) and (b) in Recommendation 19);

(c) be authorized to hire staff;

(d) be terminated automatically two years after its creation or sooner if required reforms to the committee system of the House of Commons are made.

21: We recommend that public interest group participation in the federal regulatory process be encouraged and supported by higher levels of financial assistance.

22: We recommend that, pending completion of the study called for in Recommendation 24, increased levels of funding for public interest groups be provided by government departments and agencies.

23: We recommend that the practice of awarding costs to public interest interveners in proceedings before federal regulatory agencies be expanded.

24: We recommend that the Government conduct a study of the most appropriate means of funding public interest groups, including the use of tax incentives and other methods of increasing financial support for these groups.

25: We recommend that statutes, regulations, decisions, and other material be indexed to provide easy access to the various laws and other material that are relevant to a particular subject.

26: We recommend that departments consider the use of the consensus process whenever they have determined that a regulatory standard is an appropriate policy.

27: We recommend that the Government place high priority on continued efforts to reduce paperburden and that it take prompt action to ensure passage of the statutory amendments necessary to help accomplish this goal.

28: We recommend that the Government place high priority on continued efforts to improve service to the public. Initiatives should include, among others:

(a) steps to ensure that action on inquiries or applications are taken within a reasonable time;

(b) efforts to provide "one window" service to persons dealing with several departments or agencies on a particular matter;

(c) a system to ensure that persons or bodies responsible for acting in any situation are clearly identified and easily accessible to the public; and

(d) training programs, incentives and job classifications for public employees that emphasize the importance of service to the public.

29: We recommend that where overlap, duplication or conflict of regulatory requirements exist within the federal government or between federal and provincial jurisdictions, the Government take action to reduce or eliminate the burden on the private sector. In particular, immediate action should be taken in the areas of occupational health and safety, food labelling and advertising, and food production and processing.

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Report of the Special House of Commons Committee on Regulatory Reform

I INTRODUCTION

The Special Committee on Regulatory Reform has the honour to present its Report under the terms of reference approved by the House on May 23, 1980. The Order of Reference required the Committee:

> to examine and report upon government regulation in order to minimize the burden on the private sector, including:
>
> —the objectives, effectiveness and economic impact and expanding scope of such regulations;
>
> —alternative techniques for achieving regulatory objectives;
>
> —ways by which overlap of federal and provincial jurisdictions may be eliminated.
>
> Your Committee requests that the Government consider the advisability of adopting the recommendations herein.

A. General Comments

The Committee's mandate called for it to examine and report on "government regulation". In one sense, everything that governments do is "regulation". Because such a broad definition was of no help in focusing our work, we used the narrower definition adopted by the Economic Council of Canada in its Interim Report on the Regulation Reference. Our Report considers "regulation" to be the imposition of constraints, backed by government authority, that are intended to specifically modify the economic behaviour of individuals in the private sector. This includes regulatory activity relating to health, safety, fairness, and the environment.

It is important to distinguish between "regulation" as we have defined it and "a regulation" (see Glossary). If the Government wishes to regulate and thus control behaviour, it can employ a variety of instruments. One possibility is a statute enacted by Parliament. At the other end of the spectrum, regulatory control can be exercised through internal government policy manuals, administrative directives, or interpretive bulletins. Between these two extremes lies the instrument that is most commonly relied upon: a "regulation". A regulation is, technically, a form of *subordinate legislation* made under authority of a statute. The Committee looked at "government regulation" because it was asked to do so. The Committee looked at "regulations" because regulatory intervention is often carried out through the use of this instrument.

The Committee believed that its role should be to provide guidance for change and to promote regulatory reform. In carrying out our mandate, we first issued a discussion paper and called for comment from the private sector, including business, labour, and consumers, as well as from the federal and provincial governments. We benefitted from the very detailed and wide-ranging response that came from a variety of groups and individuals in the private sector. Other bodies that have examined government regulation have not enjoyed the same advantage of being able to test ideas for reform in a public forum. Valuable insights have been gained through this process.

We also benefitted from information supplied to us by provincial governments. Several have been active in the area of regulatory reform. We found new ideas and learned about useful approaches that might be implemented at the federal level.

Finally, we benefitted from the testimony and submissions of officials from a variety of federal departments and agencies. We asked Ministers to allow their officials to aid the Committee by sharing their experience and expertise as professional managers and advisors. We are pleased to report that, in virtually all cases, our request for assistance resulted in an open and very constructive exchange. We were encouraged to hear of the Government's efforts to improve its regulatory activities. The private sector's concern about regulation is matched by a similar concern and sensitivity to the problem within the Government.

In summary, the Committee found widespread support for regulatory reform, especially for our approach which has been to focus on the processes by which regulatory initiatives are developed, administered, and reviewed. We did not find widespread support for "deregulation", nor did we review specific industries or sectors to determine the extent to which deregulation might be appropriate. We look forward to the Economic Council of Canada's Final Report on the Regulation Reference, which is expected to provide more information on this issue. In the meantime, however, we anticipate that deregulation in some circumstances could be one of the benefits that will flow from implementation of our recommendations.

B. Underlying Themes

A number of basic themes emerged from the testimony and submissions we received. The following themes underlie our recommendations and are reflected in our reasoning.

1. *The Need to Change Attitudes as Well as Procedures*

The Committee realizes that simply changing procedures will not guarantee improvements. Reform must be carried out by people and the mere existence of internal rules will not ensure that desired behaviour results. A first and essential step in regulatory reform must be a change of attitude in both the public and private sectors. The private sector must be prepared to work with Government and government officials must welcome greater private sector participation as a means of ensuring better and less burdensome regulations.

2. *The Need for Strong Political Will*

The Committee is convinced that successful and meaningful regulatory reform will not result unless individual Ministers and Members of Parliament make it clear that reform is necessary and that progress is expected. As reforms might affect vested interests in the private sector and the bureaucracy, the Government must take every opportunity to communicate its concern and its desire for action to both the private sector and to government officials. From what we have learned about experiences with regulatory reform in other jurisdictions, we are convinced that the driving force behind reform must be a strong, constant, and clearly demonstrated political will.

3. *The Public Expects More From Parliament*

The Committee believes that the full measure of benefit from regulatory reform will not be attained without parliamentary reform. We have focused our attention on specific functions relating to regulatory activity that might be performed by Parliament and that we feel would improve accountability and ensure that regulation is in the public interest. Parliament's long-term success in carrying out any of these functions will depend on general changes in parliamentary procedures and

practices. There is growing support among Members for parliamentary reform. Significantly, we have found that the private sector also feels that changes are necessary and that parliamentarians should play more active and constructive roles.

4. *Regulation is Not a Panacea*

Regulatory intervention has significant effects on the distribution of wealth in our society. It creates "winners" and "losers", and it is not always the consumer or the worker who benefits. In some cases, regulation helps business. In addition, when increased costs are imposed on businesses, they can often pass these on to consumers through increased prices.

The individuals and organizations from the private sector that made submissions and appeared before us acknowledged the legitimacy and supported the objectives of government regulation. Their concern was not with regulation *per se,* but with regulatory control that imposed unnecessary burdens on businesses, workers or consumers. Burdensome regulation undercuts the objectives sought by Parliament and ensures that performance will never match expectations. We get less than we wanted and pay more for what we do get.

Even with the best possible regulation, however, Canadians must accept that governments cannot solve all problems and that our nation's resources, including labour and capital, are limited and subject to many conflicting demands. Objectives must be clearly defined and properly understood. We must consider whether the objectives can best be achieved through regulatory intervention, or through taxes, subsidies, tax expenditures and other measures, or through individual initiative. Regulation, or indeed any form of government intervention, might not be the best approach. If regulation is selected as the appropriate mechanism, then we must design the system so that it is as efficient as possible, providing us with the greatest benefit for the least possible cost.

5. *Putting People First*

Officials who appeared on behalf of Nova Scotia, Ontario and the federal government told us of their efforts to improve the delivery of government services to the public. A common theme underlying the "service to the public" initiatives of these governments is that members of the public are "customers" of government and that customers must come first. We are convinced that this is a useful approach.

6. *The Need for Flexibility*

The "service" offered by the various regulatory operations in the federal government differs considerably, as do the "customers". Accordingly, we have rejected recommendations that would apply on a rigid, uniform basis to every department and agency. Rather, we believe each department and agency should be able to tailor its own processes to fit its own unique requirements and those of the public it serves. We have tried to ensure that our recommendations will allow the flexibility that is essential if the mechanisms we propose are to be successful.

7. *The Benefits of Consultation*

The most frequent comment heard by the Committee was the need for early and wide consultation with the private sector on regulatory initiatives. The Committee believes that consultation is a valuable tool for public sector management. Regulators who genuinely wish to make informed decisions about how and when to intervene must seek the advice and reaction of the private sector. Consultation should not be seen as another burden to be shouldered by the bureaucracy. We are convinced that early and wide consultation is potentially the most effective approach for reducing the burden of government regulation.

C. Principles That Shaped Our Recommendations

In addition to the broad themes outlined above, there were a number of specific principles that directly influenced our Report and our recommendations.

1. *If It Works, Don't Fix It*

Although we believe that there is considerable room for improvement, it is only fair to point out that the federal government has demonstrated a concern for regulatory reform and has instituted a number of useful changes in its systems and procedures. If something is working well, it would be foolish to tear it down. If it is not working as well as it might, it usually would make more sense to fix it than to replace it.

2. *No "Fine Tuning"*

As members of this Committee, our job was to inquire into certain problems associated with regulatory intervention and to provide guidance to Parliament on how the problems might be solved. The Committee hopes that its suggestions will be accepted and acted upon. We realize, however, that the objectives we seek will have a better chance of being achieved if Parliament allows ministers and officials needed latitude in implementation. For this reason, we have chosen not to "fine tune" our recommendations.

3. *Allow Flexibility, But Ensure Action*

The Committee favours a flexible approach to regulatory reform, but we are concerned that the lack of rigid, uniform requirements not become an excuse for inaction. The principal responsibility for change must rest with the individual departments and agencies, but there must be methods to ensure that this responsibility is discharged.

The Office of the Coordinator, Regulatory Reform was established to act as a catalyst for regulatory reform, to aid and encourage departments and agencies in their efforts, and to coordinate the Government's overall initiatives. The Office, which advises the President of the Treasury Board, has no direct responsibility for implementing reforms within departments or agencies. We believe this arrangement is proper. The ministers and deputies and the heads of regulatory agencies have the power to see that change takes place within their organizations. We believe that accountability should be focused on those who can exercise such power. Scrutiny and comment by both Parliament and the private sector should ensure such accountability and maintain the pace of reform.

The Committee also believes, however, that the Minister charged by the Prime Minister with the overall responsibility for regulatory reform, the President of the Treasury Board, must be accountable for matters within his control. Coordination of the Government's regulatory reform initiatives is a major responsibility. We suggest that after a reasonable period of time, the President of the Treasury Board, in his coordinating capacity, report to Parliament on the progress made by the Government in regulatory reform.

II IMPROVING NEW REGULATION

A. Consultation: Communication and Openness

The Committee strongly endorses the principle of consultation and believes the process should permeate the activities of government. In our view, early consultation is the fundamental feature of regulatory reform. The key to more effective regulation involving the least possible burden on the private sector is the participation of a wide variety of interests in the process of regulation from the earliest possible stage.

The Committee heard nearly unanimous approval of the principle of broad consultation from both government and private sector witnesses. Early consultation with affected groups and individuals allows departments and agencies to define more carefully the problem to be solved or objectives to be met by regulating. Serious consideration of alternatives other than regulation is more likely to occur when outside parties are consulted. A department may discover that other approaches such as self-regulation or tax incentives may solve the problem.

The Committee has heard of several instances in which self-regulation or guidelines have been adopted instead of regulation. For example, recall procedure guidelines were issued by the Department of National Health and Welfare for unsatisfactory food, drugs, cosmetics, or medical devices. The recall guidelines were developed as an alternative to proposed regulations.

Communication between the Government and interested parties means that each understands the other's needs, objectives, and positions better. The Government is able to determine the type or degree of regulation that intrudes least on private sector activities while still meeting regulatory objectives. Those who are regulated comply more easily because they understand the motives of Government, have had input into the development of the regulation, and have had time to adjust their activities for compliance. The additional time spent on consultation may ultimately be offset if compliance is achieved with minimum disruption.

With early consultation, there may be fewer enforcement problems because an attitude of cooperation and an exchange of information allows the parties to develop efficient enforcement mechanisms. An ongoing relationship between the regulator and the regulated is established that allows them to work together to solve future problems of compliance, enforcement, or amendment.

The Committee was impressed by testimony about some of the consultative processes of government bodies, including the Canadian Radio-television and Telecommunications Commission, the Department of Consumer and Corporate Affairs, the Department of the Environment, and the Department of National Health and Welfare. We are not satisfied, however, that all departments and agencies presently are consulting early enough, often enough, or widely enough. It is too easy for a department or agency to say that it has consulted because it has talked with one or two clearly defined interest groups. It may be more convenient to deal with only a few people and we recognize that a prescription to consult with "*all* those affected" could impose an impossible burden. Consultation has a cost and at some point this cost outweighs the benefits. In spite of this, the Committee feels that there is room for improvement in the consultative procedures of many departments and agencies.

Recommendation 1: We recommend that each department and agency develop its own system for consultation with the private sector. Each system should provide for early and effective consultation before any regulatory initiative is undertaken.

The Committee recognizes the fluid nature of the consultation process and the difficulties of establishing hard and fast rules. It is not always possible to say in advance who should be consulted or at what point consultation should take place. A flexible approach is required.

Each department and agency should consult with its own interested publics to learn how it might better consult on specific matters in the future. We stress that "publics" is in the plural since a wider range of interested parties should be brought into this "consultation on consultation" than might necessarily be included in consultation on a specific regulatory initiative. This search for better methods of consultation should be undertaken with more publicity, wider notice of intent to consult, and discussions with more individuals than would occur in routine consultations. The issue of notice to the public is critically tied to the issue of consultation and we will discuss this further below. However, several witnesses suggested to the Committee that notice of a regulation might be given through the newspapers. We feel that this would be prohibitively expensive in most circumstances, but it might be appropriate when establishing a basic system for consultation.

Our recommendation that each department and agency develop its own general system for consultation means that the primary responsibility for the system is within the individual department or agency. The development of the consultation systems should be aided by a central body, which can coordinate and facilitate exchanges on consultative techniques among the departments and agencies so that each can benefit from the others' experience.

The Committee considers the improvement of consultation procedures to be fundamental to regulatory reform. We believe it should be given a high priority. We urge departments and agencies to set objectives and impose timetables on themselves. We expect that the development of better consultation systems will begin immediately.

B. Advance Notice

1. *List of Persons to be Notified*

Advance notice of regulatory initiatives is closely tied to the quality of consultative procedures. Interested persons must be assured that they will be notified when a department or agency is considering regulation.

Recommendation 2: We recommend that any system for consultation developed by a department or agency include the establishment of a public list of interested persons who will be notified by the department or agency with respect to regulatory initiatives.

We feel that such a list would be an important aid to ensuring adequate consultation. The list would be public and people or groups could ask to have their names added to the list. In fact, each department or agency would likely keep several lists, one for each area of regulation it deals with. People could be on more than one list. Many departments and agencies have informal lists at the present time and this recommendation would formalize such systems.

2. *Regulatory Agenda*

The system of lists of people to be notified will be most useful in ongoing or recurring regulatory matters. Departments and agencies, however, cannot always predict that a particular matter may require regulation, so a list will not necessarily provide the names of all who should be or would like to be consulted. Nor will consultation with those on a list provide notice to the general public about regulatory initiatives. The fairness and openness of our democratic process require that as many people as possible know about the activities of the Government. There must be wide notice of the Government's regulatory plans. Such notice must be given as early as possible so that interested groups and individuals may respond and the Government can benefit from the information as it proceeds.

Regulatory statutes generally take some time to develop before they are introduced in Parliament. As bills pass through the legislative process, further opportunities are provided for public comment. Regulations promulgated under statutes may also take some time to develop—two years being a common period—but they are not subject to a public process that provides the same opportunities for consultation or scrutiny. Advance notice of regulations is particularly important.

Recommendation 3: We recommend that each department and agency publish twice a year a regulatory agenda giving notice of upcoming regulatory initiatives.

The Committee does not wish to prescribe in detail the format of an agenda, since experience and consultation among the departments and agencies will likely produce an appropriate format. We believe, however, that it should contain:

—a brief description of the regulation being considered;

—the legal authority for the regulation;

—a short statement of the problem that the regulation will solve; and

—the name and telephone number of a person in the department or agency whom the public may contact for more information about the proposed regulation.

Since an agenda would cover proposed regulations from the problem definition stage to the draft stage, it might also be helpful to provide some indication of the stage of development of the regulation. The status of items listed in previous agendas might also be given to indicate whether they have been promulgated, dropped or are currently listed. This would allow those interested to trace the development of a regulation through the agendas.

The Committee believes it is important for the Government to have the benefit of wide consultation and to be able to fully assess alternatives before a course of action is determined. We would encourage departments and agencies to publish items in an agenda as early as possible, even when they are only a "gleam in the eye". We recognize that there are risks in exposing ideas to the public at such an early stage. A department or agency does not want to appear to be presenting plans that have not been subject to careful thought. It could be criticized and the private sector might be needlessly disturbed. But it is important to realize that an agenda can be used to communicate ideas, not just plans for regulation. The agenda can be used to gather opinions on whether a particular initiative is necessary or feasible. It can stimulate discussions and allow parties who might be outside the regular consultation list to offer their views.

We expect that both the Government and the private sector would accept the value of early notice in the agendas and the spirit of experimentation that may characterize some of the "gleam in the eye" items. If indeed such items are unworkable, then the comment resulting from publication will identify that. On the other hand, more imaginative, flexible and less burdensome regulation can be encouraged. A department or agency should be told that a particular idea has its drawbacks, but it should not be criticized for presenting the idea at an early stage.

The agenda of each department or agency could be published in Part I of the Canada Gazette, which is available by subscription. Each agenda could then be printed as an excerpt of the Gazette. An individual could subscribe to as many or as few excerpts as be wished.

The Committee realizes there may be some practical problems in implementing an agenda, but we were encouraged by the testimony of departments that indicated support for the idea. The Department of National Health and Welfare, for example, publishes "information letters" that perform a similar function, and the Department of the Environment is incorporating into its consultation system an advance notice procedure that would also appear to be similar.

A central body would no doubt have to work with departments and agencies to help them implement the agenda system and provide guidance on such matters as the definition of a "regulation". For example, we are not concerned about regulations that change names or appoint inspectors. Agendas would give notice of intended regulatory initiatives that directly affect the private sector. We are confident that these problems can be resolved.

3. *An Index*

Each agenda would provide a useful overview of the activities of a single department or agency. Most areas of private sector activity, however, are regulated by more than one department or agency. An individual must be aware of the activities of several government bodies and should be able to determine easily which regulatory initiatives may affect him.

Recommendation 4: We recommend that an index be compiled of all agendas published by government departments and agencies.

A computerized system would likely be the most efficient and versatile method of accomplishing this. The index could be cross-referenced to the standard industrial sector classification system. Indeed, while the private sector may appreciate the index, the Government itself may find it to be a useful regulatory management tool.

The Committee is aware that emergencies will not fit into any regular system for advance notice and consultation. While an emergency that requires a response within hours will be rare, there may be situations that require action within days or weeks. In these cases, we believe that a department or agency should at least consult (by telephone if necessary) those on its appropriate list. Further notice might be given through a special edition of the relevant agenda. Depending on the nature of the emergency, further consultation may be possible. The department or agency must be prepared to justify its assessment of the situation as an "emergency" and its departure from the normal consultation process.

The Committee believes that the agenda and index would improve awareness of regulatory initiatives, but we are under no illusions about the size or breadth of the readership of the Canada Gazette. While many more people are likely to subscribe to a particular agenda than presently read the Gazette, the total numbers will probably remain small. We do not intend to imply, therefore, that the publication of an agenda would be a substitute for other, more specific, notice procedures.

C. Public Hearings and Discussion Papers

In some cases, public hearings may provide an appropriate forum for public comment. Such measures are generally used when legislation is contemplated, but there is no reason why they could not be applied if complex regulations are being developed.

The Committee was interested to hear of the experience of the independent Board of Review established pursuant to the *Environmental Contaminants Act*. Environmental matters are technically complex, are controversial, and the actions taken or not taken may have long-lasting and costly effects. Characteristics such as these make them particularly appropriate subjects for public hearings. A public hearing may also prove valuable in other areas since it serves as an educational device for all the participants—Government, industry and the general public. It provides an opportunity for catharsis when controversial issues are at stake and lends credibility and impartiality to the decision-making process. Public hearings are expensive, elaborate procedures, but used selectively, they can provide for a useful exchange of information and opinion.

The Government should make greater use of discussion papers to provoke comments and provide the public with an appropriate opportunity to participate in policy formation. Experience with discussion papers on tax reform, social security and immigration would indicate that they are an effective mechanism for stimulating public participation in government decision making prior to the introduction of legislation.

The point that the Committee wishes to stress is that different consultative techniques will be required in different situations. Departments and agencies should experiment with innovative techniques that will meet their own needs and the needs of their public. There are different tools, but each is intended to encourage open, critical thought about regulation and alternatives to regulation.

D. Publication of Draft Regulations for Comment

The Committee has noted that an increasing number of statutes require the publication of draft regulations in the Canada Gazette before promulgation. At least sixty days is usually provided

between publication and promulgation in order to allow the interested parties to make final comments on the proposed regulations. Most witnesses felt that sixty days was adequate, but they would have preferred longer comment periods.

The Committee commends those departments and agencies that undertake to prepublish even without a statutory requirement to do so. Yet, such publication is not a substitute for earlier notice (in an agenda or through other means) and consultation. It is difficult to persuade regulators to make major changes after a final draft has been published. Too much has been invested in the form of the regulation by that time. Only early notice and consultation will result in the exchange of views and consideration of alternatives that will yield more efficient and effective regulation. Prepublication of draft regulations, however, does provide an excellent opportunity for "fine tuning" and last minute adjustments.

Recommendation 5: We recommend that departments and agencies prepublish regulations whenever appropriate.

We realize that some regulations cannot be published in advance of promulgation. Most regulations concerning tax matters and many concerning energy supplies could not be published before they take effect because of the disruptions and inequities that would result. Some regulations must be passed quickly, either because of an emergency or because of subject matter (some *Fisheries Act* regulations, for example). Some regulations have such minor implications or affect so few people that prepublication is unnecessary. Since it may be difficult to establish broad criteria for prepublication, we do not recommend a mandatory requirement to publish all regulations in advance of promulgation. The onus should be placed on departments and agencies, however, to justify why prepublication of a regulation is not desirable or possible.

E. Disciplined Regulation

Better regulation requires more careful and thoughtful decisions about regulation. The Committee hopes that greater openness about regulatory initiatives and improved consultation will lead agencies and departments to a better understanding of the impact and costs of the regulations they impose. In addition, the Committee wishes to stress the importance of a disciplined approach to decision making. This approach will not only increase the likelihood that regulation will be less burdensome but also that the Government can meet its objectives more effectively. We are stressing better management of government regulation and the approaches we recommend are management tools. It is in the interests of the regulators to learn to use these tools effectively.

Recommendation 6: We recommend that all proposed regulations be subjected to an appropriate impact assessment to be performed by the sponsoring department or agency.

Assessment of any regulation should include the consideration of basic questions:

—What is the problem?

—What alternative solutions have been considered?

—How will this proposal help?

—What are its drawbacks?

—What are its advantages?

—Who will gain and who will lose?

—Why is it the best means of dealing with the problem?

Answering these questions will provide the basis for the better regulatory management we encourage. The answers will also provide an impact assessment (see Glossary) of a proposed

regulation. The degree of detail, complexity and sophistication of the assessment should vary with the nature of the regulation under consideration. A regulation with very costly consequences might be accompanied by an assessment similar or identical to those now required under the Socio-Economic Impact Analysis (SEIA) program (see Glossary) administered by Treasury Board Canada. It would be counterproductive and prohibitively costly to require such a complex assessment from departments and agencies for less major regulations. A regulation of minor consequence might only be accompanied by a single sheet of paper that gives a short account of the assessment that underlay the decision to impose the regulation. Regulations with consequences between these two extremes should be accompanied by assessment of commensurate complexity. Complex and technical assessments should be accompanied by a summary readable by the interested public.

We wish to stress that our concern is not so much with the form of the requirement to assess regulation as it is with the disciplined thinking that performing an assessment should produce. We realize that most departments and agencies already look at these matters when they consider regulation. We are concerned, however, that this may not be done in a systematic way and that some of the basic questions may not be stressed in certain situations. For example, when alternative solutions to a problem are considered, it is important that they include policy instrument alternatives other than regulation, such as taxes or subsidies, not simply alternative levels or standards of regulation. Alternative methods of developing the regulation, such as the consensus process, should also be explored.

The Committee supports the work done under the SEIA program. Although only three SEIAs have been published to date, we have heard compliments about their professional and technical quality. We also appreciate the efforts of the Administrative Policy Branch of Treasury Board Canada to provide us with the results of an evaluation of the SEIA program. That evaluation and the testimony of witnesses have allowed us to draw some conclusions about the program.

The Committee is concerned that the purposes and uses of the SEIA program do not appear to be well understood throughout the Government. Too many departments see a requirement to perform such an analysis as a burden and a hurdle to be overcome. The quality of the published SEIAs would indicate that technical requirements are well understood and that the Technical Advisory Group within Treasury Board Canada apparently has done a good job of working with individual departments to develop methodologies and techniques for analysis. Middle and upper management within many departments, however, may need to develop a better understanding of the uses of such analyses as management tools and aids to decision making. Treasury Board Canada may wish to consider filling this need.

The evaluation of the SEIA program done by Treasury Board Canada and testimony and submissions also indicate that many members of the public are unaware of the program. The Committee urges Treasury Board Canada to publicize the existence and uses of the Socio-Economic Impact Analysis program.

The analysis implied by the SEIA program seems to cause concern to those who deal in the areas of human health or safety. Our inability to place dollar values on intangibles such as human life or quantify the dollar value of a clean environment leads some to question the benefit of the analysis or ask if it imposes a narrow, technocratic view on decision making. These fears were expressed by both government and private sector witnesses.

A greater appreciation of the use of cost-effectiveness analysis (see Glossary) rather than cost-benefit analysis (see Glossary) in situations in which a benefit cannot be assessed in dollar terms needs to be developed. The value of the analysis as a decision-making tool needs to be emphasized. Indeed, even if a complete SEIA analysis is not required, we would want to see the discipline of the thought process enhanced by use of a simpler assessment.

Since departments with actual experience in performing SEIAs, such as the Department of the Environment, appear to understand better the management and decision-making benefits of the SEIAs, it may be that increased use of some simplified form of impact assessment will allow other departments to appreciate the value of this approach.

III IMPROVING EXISTING REGULATION

A. General Comments

The emphasis in Part II was on improving new regulation, but the Committee realizes that the existing stock of regulation is the major source of burden on the private sector. For one thing, there is much more of it. It is also more likely that regulation that has been in place for a long time will no longer meet its original objectives or that its original objectives will no longer be appropriate. Indeed, some programs may have effects that were never intended by those who designed them. Since the number of regulatory programs has grown incrementally, little or no attempt has been made to look at them collectively. Some may be working at cross purposes to others or the combined effect of several might be far more costly to the private sector than the benefits would justify.

B. Review of Existing Statutes and Regulations

The stock of regulatory statutes and regulations include some that may be outdated, redundant, counterproductive, or wasteful.

Recommendation 7: We recommend that each department and agency review immediately its regulatory statutes and regulations to:

(a) identify unnecessary and outdated regulatory statutes and regulations; and

(b) set a schedule for more detailed review and further action.

Statutes and regulations can be reviewed relatively quickly to determine what form of detailed review they require. The Committee was impressed with the review undertaken by the Department of Agriculture. Its study consisted of two phases. Under Phase I, the Department categorized all the relevant acts and regulations into several groups:

—those containing sunset clauses (see Glossary)

—those to which sunset clauses should be added

—those that should be revoked

—those that required detailed review

—those that required future consideration.

Under Phase II, a departmental action plan was developed that established the responsibility and timing for the action required for each statute or set of regulations. Revocation has been proposed for eight statutes.

A review such as that undertaken by the Department of Agriculture allows a department or agency to quickly eliminate unnecessary or outdated regulation and to set priorities for scheduling evaluations of regulatory programs. The detailed review or further consideration required for some statutes or regulations could likely be best undertaken in the context of review of the programs authorized by those statutes.

C. Evaluation of Regulatory Programs

The Office of the Comptroller General has been advising and assisting departments and agencies in the development of systematic program evaluations (see Glossary). The purpose of an evaluation is to look at the effectiveness of a program in meeting its objectives. The results—both intended and unintended—of the program and whether there might be more cost-effective ways of achieving the results are examined.

According to the Office of the Comptroller General, a number of departments appear to have adequate systems for program evaluations in place. The Committee is concerned, however, that progress appears to be hampered by a lack of expert personnel assigned to perform evaluations and by the pressure of competing needs for scarce resources within departments.

The Committee supports the efforts of the Office of the Comptroller General and the departments to ensure that satisfactory evaluations are carried out on both regulatory and expenditure programs. Good evaluation are a management tool that will contribute to more efficient and responsive regulation.

Another concern of the Committee is that evaluation efforts tend to focus on expenditure programs. We recognize, however, the apparently logical emphasis on expenditure programs rather than regulatory programs in the determination of evaluation schedules. Since most of the costs of regulation are borne by the private sector rather than by Government, a regulatory program appears to expend few resources relative to most of the Government's expenditure programs. The Committee is concerned that not enough emphasis has been placed on the evaluation of regulatory programs. We would like to see this changed. Regulatory programs that cause large private sector compliance costs must be given a higher priority.

Recommendation 8: We recommend that departments and agencies ensure that all their regulatory activities are evaluated periodically under the program evaluation system administered by the Office of the Comptroller General.

IV OTHER TOOLS FOR REGULATORY REFORM

A. Sunset Clauses

The review by the Department of Agriculture of its statutes and regulations highlights the question of whether sunset clauses serve a useful purpose in regulatory review. The classic sunset clause terminates the legislative authorization for a program. The legislature must act if the program is to continue. The Committee agrees with those witnesses who cautioned that widespread use of the classic "terminating" sunset clause would likely overload Parliament and result in *pro forma* consideration of programs. It is possible, however, that classic sunset might be useful in a few select situations. The decennial review of the *Bank Act* is not without problems, but the sunset provision does mean that important legislation receives periodic consideration. It may be that certain other basic statutes, such as the *Copyright Act* or the *Patent Act,* could benefit from such review. The classic sunset clause also is appropriate when a statute is passed to meet a short-term need or to authorize an experimental program.

While we heard testimony that the "death" clause of classic sunset may be necessary to stimulate periodic review, it may be possible to require the review by statute without providing for termination. This would be appropriate when the Government wishes to ensure that a program is reviewed at a particular time or at certain intervals.

The Committee believes that sunset clauses serve specific needs and we suggest that departments and agencies consider the appropriateness of sunset clauses when reviewing the statutes and regulations that they administer.

B. Annual Reports

The failure of annual reports to provide adequate information on the responsibilities, activities, and goals of many departments and agencies has been noted by this Committee. We believe that annual reports should contain sufficient information so that parliamentarians and the public can obtain a reasonably comprehensive picture of activities in the past year. In addition, we agree with the Royal Commission on Financial Management and Accountability (the Lambert Commission) that annual reports should be forward-looking documents, not simply summaries of past activities.

In the context of regulatory reform, the Committee believes that the public should be made aware of the progress that each department and agency is making in its own regulatory reform efforts. This could help ensure, we believe, that the Government responds to the need for reform, and familiarizes the public and Parliament with reform efforts.

Annual reports would be one tool parliamentarians could use to ensure that regulatory reform activities are carried out. Furthermore, parliamentarians must be informed about the regulatory activities of the Government and its efforts to carry out those activities with the least cost and burden on citizens.

Recommendation 9: We recommend that the annual reports of departments and agencies include:

(a) a summary of the progress that has been made on regulatory reform, including the reduction of paperburden, initiation of better service to the public, and expansion of notice and consultation procedures;

(b) a summary of major regulatory initiatives undertaken in the past year;

(c) an identification of major regulatory initiatives contemplated;

(d) an identification of program evaluations completed in the past year; and

(e) a schedule of future program evaluations.

C. A Regulatory Budget

A regulatory budget (see Glossary) identifies and sets limits on the regulatory compliance costs that a department or agency can impose on the private sector. It forces the regulator to treat the private sector costs as if they were costs to government, although government does not actually assume them. Each department or agency is given a budget of regulatory costs which it must not exceed. The department or agency can decide how, within its limits, it wishes to "spend" its regulatory allotment. An incentive to minimize, or at least consider, the costs to the private sector is created.

One attraction of the regulatory budget is that, unlike either program evaluations or before-the-fact impact assessments, it requires an agency or department to consider all its regulatory programs together and set priorities. Benefits are considered implicitly when priorities are set. Nevertheless, the implementation of a regulatory budget faces formidable obstacles, not the least of which is finding a reasonable means of assessing private sector compliance costs. Many regulatory costs have long been built into overhead costs by the firms and it would be difficult and costly to identify them.

The Committee suggests that the Government take no action to implement a regulatory budget at this time. The Government should follow closely the experience in other jurisdictions with regulatory budgeting to determine whether this concept would be useful.

V REGULATORY AGENCIES

A. General Comments

In early Parts of this Report, we made recommendations relating to consultation, advance notice and decision-making processes that apply to both departments and agencies. Agencies have characteristics and responsibilities, however, that make them different from departments and that require us to consider and make recommendations about them separately.

Indeed, it is important to consider regulatory agencies in any review of regulatory reform issues since the agencies possess such a significant potential, individually and collectively, to impose a burden on the private sector. The extent and the importance of the decisions that agencies make raise important questions about accountability.

Much of the comment that was received by the Committee related to adversarial proceedings conducted by agencies. This is no doubt a reflection of the current nature of agency activities. However, the Committee foresees a greater emphasis being placed on policy proceedings than is presently the case. Thus, while the Committee will have to address particular problems that relate to adversarial proceedings, it is important to recognize that the mechanisms for consultation and related matters we are recommending must be considered applicable to policy proceedings as well.

The regulatory agency is arguably the most visible actor in the regulatory process. On the basis of the briefs submitted to the Committee and the submissions made during appearances before us, that proposition can be restated to indicate that certain regulatory agencies are more visible than others. The agencies that received the most frequent comments were: the Canadian Radio-television and Telecommunications Commission (CRTC), the Canadian Transport Commission (CTC), and the National Energy Board (NEB).

The Committee was struck by the considerable diversity that exists with respect to the three agencies we heard about so often. We note this fact in order to underscore the difficulty of establishing general recommendations to be applied to all federal regulatory agencies. Our recommendations reflect, therefore, our theme that flexibility is necessary and that procedures must be tailored to fit the customer.

B. Mandate of Regulatory Agencies

Regulatory agencies do not possess an inherent power. They are created by statute and their decisions and actions must always be authorized by enabling legislation. The Committee received considerable comment on the degree to which enabling statutes could contain more specific mandates. Although a number of vague mandates were drawn to our attention, we were impressed with warnings about the inability to draft a mandate in more specific terms. Thus, while the Committee considers that it would be desirable to have clearer statutory mandates, we recognize that such an exercise would be extremely difficult and, in some cases, almost impossible. We have been shown examples where an enabling statute cannot, indeed should not, attempt to cover all of the policy matters that will arise.

In a period of rapid change, regulatory agencies must be able to react quickly. One possible approach to the problem would be to permit the agencies themselves to clarify their statutory

mandates. For example, the Canadian Transport Commission currently has a responsibility under the *National Transportation Act* to do just that. And yet the President of the CTC was very direct in his opinion that this would not work. In his appearance before the Committee on September 19, 1980, Mr. E. J. Benson stated (Issue No. 4, pp. 36, 38):

> "I think we have not been in a position to go out and state publicly what we think policy should be. That has not been done since the Commission was formed and yet it says in the law that the Commission should do this. But this just cannot work, where the Commission can be advocating a policy for example, in conflict to what the Government is doing when the Government, can, in effect, issue directives to the Commission as to what policy to pursue.
>
> . . . The National Transportation Act was originally passed with a view that the Canadian Transport Commission would come forward with not recommendations but statements of what policy should be in the Government of Canada. It never did that. My predecessor did not do it. Instead what has happened is that both he and I believe that the ultimate decision as to policy depends on government. I am talking about overall policy. . . .It is a governmental matter; it is not a matter for a regulatory commission to decide policy."

A similar position was taken by the Chairman of the CRTC. During his appearance before the Committee on September 18, 1980, Dr. J. Meisel stated:

> "Certainly as someone watching the operation of the Commission over the years. I have felt that very often the Commission was called upon to make decisions which probably ought to have been made by Parliament. In other words, that perhaps the mandate was somewhat larger that might have been desirable so that major policy decisions were in fact made by the CRTC, but with very powerful consequences for the country. And I think that they were always taken very responsibly but it is Parliament who should, in fact, make those decisions."

The Committee is of the view that regulatory agencies should not be required to make such policy decisions. What is critical is that the legislative and regulatory systems be flexible and responsive to changed circumstances when they arise.

C. Policy Directives

Although enabling statutes should provide more precise policy mandates for agencies, there still will be areas in which the policy to be applied by an agency must be developed and refined. In one sense, an agency refines policy whenever it applies the larger policy to the facts of a particular case: each decision represents a further refinement. Sometimes, however, the agency will not be able to apply existing policy because it requires extension or modification. Indeed, major change may be required. Major changes or developments in policy, for example changes that confer new powers or jurisdiction on an agency, should be achieved through amendment of the enabling statute. There is a middle range of policy development, however, that should not require legislative action, but, because of its importance, should not be left to the agency.

Recommendation 10: We recommend that

(a) amendments be made to the *National Transportation Act* and the *Broadcasting Act* so that Cabinet can issue binding policy directives to the Canadian Transport Commission and the Canadian Radio-television and Telecommunications Commission; and

(b) the Government study the feasibility of extending policy directives to other federal regulatory agencies.

The Committee notes that bills tabled in previous parliaments have included provisions for policy directives (see Glossary) to the CTC and the CRTC. Those policy directive powers, however, were not as extensive as the Committee considers to be desirable nor did they provide for a public process such as the one we suggest.

Before discussing procedural mechanisms to guide the policy directive process, we wish to reiterate that policy directives will be appropriate to clarify policy issues—such clarification being necessitated by changed circumstances in the regulated industry or society at large. We emphasize the word "clarify" because the suggestion that policy directives can "modify, change or vary the policy established in the legislation" goes too far. Only Parliament is capable of changing legislation. Thus, while a policy directive will be of assistance in providing clarification, the policy directive process must not be a substitute for full parliamentary review when it is necessary to amend, rather than clarify, legislative policy.

The Committee has been impressed with the desire of regulatory agency members, expressed in appearances before the Committee, to have clearer statements of policy to assist them in arriving at determinations in specific cases. Indeed, it is somewhat anomalous at present that a regulatory agency may refer any question or issue of law, of jurisdiction, or of practice and procedure at any stage of its proceedings to the Federal Court of Appeal for hearing and determination (*Federal Court Act*, s. 28), while no comparable provision exists with respect to clarification of policy.

Since the Government is ultimately responsible for the content of the directive, it is appropriate that it also be responsible for the process. Regulatory agencies themselves, however, should also be able to request the Government to issue a policy directive. Their expertise and experience provide them with a unique opportunity to identify areas for which policy must be developed. The adjudicative role of the agencies lends a special urgency to their need for policy directives.

Parties to a regulatory agency proceeding could also play an important role in identifying the need for a policy directive. Such a party should be able only to ask the agency to request the Government to initiate a policy directive process. An interested party should not be able to make such an application directly to the Government. The intervention of the regulatory agency is necessary to ensure that the policy directive is required for the proceeding.

The Committee recognizes how difficult it is to anticipate all subject areas that may potentially require policy clarification. The need may not be recognized until a particular situation arises. In practical terms, this means that regulatory agencies will continue to be asked to resolve matters when a clear policy directive has not been provided. To be more specific, if an application before a regulatory agency raises major policy issues that have not been addressed in the enabling legislation or through a policy directive, the Government should be able to issue a "stop order" (see Glossary) to the regulatory agency. The order would stop the hearing on the application until the major policy issue has been resolved. The agency would then apply the new policy to the facts of the case before it.

As desirable as all of the above recommendations appear to members of the Committee, there is nevertheless a major concern regarding the extent to which a policy directive process will inject delay into regulatory decision making. We have noted the need for policy directives to respond to rapid change in the industries being regulated. It follows that a policy directive must be provided as expeditiously as possible. The Committee has resisted the temptation of recommending specific time periods in which a policy directive must be provided. We are confident that the spirit of our recommendation regarding the need for policy directives will result in procedures that emphasize speed and minimize delay. Having such a philosophy articulated in the necessary legislation will accomplish much more and be far more workable than the inclusion of time limits.

We reiterate that the ultimate responsibility for issuing a policy directive should rest with the Government. Because of the potentially far-reaching implications of a policy directive and its impact

on the private sector, we advise that the Government undertake a process of consultation to assist in formulating a new directive. Such a process would be consistent with our earlier recommendation on the need for greater consultation, and similar approaches could apply.

Once the Government has decided that a policy directive may be needed, it might choose from among a number of institutions to assist with its consultation. These include the regulatory agency, the appropriate government department, a parliamentary committee, a royal commission or a commission of inquiry. The nature of the needed policy clarification will, in large measure, dictate the most desirable institution to assist the Government in conducting a policy review.

A report would be made by the reviewing institution to the Government. The Government would not be bound by this report in formulating its directive, but the hearing process and public access to informed opinion about policy choices would enhance the Government's accountability for its actions.

As strongly as we advise such an open, consultative procedure, it need not be mandatory. The Government could proceed with a policy directive exercise without seeking private sector comment. There may be emergency situations when such action is necessary; however, we believe these situations would be rare. Furthermore, we are satisfied that the Government recognizes the value of a consultative process.

D. Cabinet Appeals

The controversial issue of review by Cabinet (technically; the Governor in Council) of regulatory agency decisions is appropriate to a discussion of policy making, since Cabinet review has traditionally been restricted to an examination of the manner in which policy has been applied.

The Committee heard testimony that presented arguments both for and against Cabinet appeals. The arguments in favour of Cabinet appeals relate to the Cabinet's being responsible and accountable for important regulatory decisions. Arguments against include the potential for Cabinet review undermining the independence of regulatory agencies and the appeals themselves imposing an undue burden on the Cabinet.

There is also an argument that the introduction of a policy directive process, such as we recommend, would mean that Cabinet appeals would no longer be necessary. The Committee does not agree. We do feel, however, that the recommended policy directive process will mean that Cabinet appeals in the future will be less frequent than at present.

Recommendation 11: We recommend that the process of Cabinet appeals from decisions of the Canadian Radio-television and Telecommunications Commission and the Canadian Transport Commission be retained. Cabinet appeals from decisions of other federal regulatory agencies should not be instituted until studies are conducted to consider their feasibility.

At present, the CTC and CRTC are the only agencies whose decisions can be appealed to Cabinet. Our recommendation that appeals to Cabinet from decisions of the CTC and CRTC be retained entails, we believe, the need for Cabinet to be able to review the application of its policy directives by these agencies. In addition, we do not recommend that appeals to Cabinet from their decisions be restricted to issues arising from the application of policy directives. Cabinet should have the power to overturn an agency decision on the basis of an overriding public interest. We note in passing that Cabinet appeals are available from decisions of the respective Ministers under the *Trust Companies Act*, the *Industrial Design Act*, the *Loan Companies Act*, and the *Small Loans Act*.

On the other hand, we have not recommended that Cabinet appeals from the decisions of other regulatory agencies be instituted at this time. We did not hear testimony from nor have we had an

opportunity to study all agencies in detail. Accordingly, we have recommended that further studies be undertaken to assess whether Cabinet appeals should be available from the decisions of other agencies.

The first step in any study regarding policy directives and Cabinet appeals should be identification of the various categories of federal regulatory agencies. The Committee is concerned that, given the importance of regulatory reform, such a basic task has not yet been completed. We urge the Government to undertake the exercise immediately.

E. Procedures for Cabinet Appeals

One fact about Cabinet appeals must be made very clear: Cabinet review of an agency decision is a political exercise that cannot be completely divorced from other activities conducted by the Cabinet. When the Cabinet determines an appeal from either the CRTC or the CTC, it does not somehow transform itself into a quasi-judicial appellate body. This principle has recently been endorsed by the Supreme Court of Canada in a decision entitled *The Attorney General of Canada* v. *Inuit Tapirisat of Canada and the National Anti-Poverty Organization* (October 7, 1980, unreported).

The Court also held that subsection 64(1) of the *National Transportation Act*, which provides for Cabinet review of decisions of the CRTC and the CTC, does not impose any requirement on the Governor in Council to give reasons for his decision, to hold any kind of a hearing, or to acknowledge the receipt of a petition.

The Committee believes that, notwithstanding the political nature of Cabinet appeals, there should be minimum procedural decencies. It is important for public confidence in the governing process in general and the regulatory process in particular that Cabinet be seen to act fairly. Given the interpretation of subsection 64(1) that the Supreme Court of Canada has provided, there is a need to establish explicitly minimum procedural requirements appropriate to a Cabinet review.

Recommendation 12: We recommend that the following minimum procedural requirements be established for appeals to Cabinet from decisions of regulatory agencies:

(a) notification of the appeal be given by the petitioner or by Cabinet, if acting on its own motion, to all parties of record at the agency hearing;

(b) interested persons be given an opportunity to make submissions to Cabinet according to a timetable that it will set and communicate; and

(c) if the decision of the regulatory agency is not affirmed, the Cabinet decision include written reasons.

The reason why we recommend that notice of an appeal be given to all parties of record at the agency hearing, and that interested parties be given an opportunity to make submissions is that these requirements underlie our notions of basic fairness. In addition, they will assist Cabinet in ensuring that it has sufficient information on which to act.

It is also important that written reasons be given when an agency decision is reversed by Cabinet. Without them, the agency will not know what message it is receiving from Cabinet and how that message should be applied in future decisions. In effect, reasons are a policy directive and they should provide a clear explanation of the policy that was applied and its application to future decisions. The reasons need not be long. The circumstances of the case will determine the appropriate length.

The Committee is of the view that these minimum procedural requirements will enhance the Cabinet review process and, at the same time, not impose a burden on ministers, government officials, or parties interested in the review.

These procedural changes could be introduced through an amendment to the governing legislation or through promulgation of regulations. The Government also could adopt voluntarily rules of procedure through a policy statement or Order-in-Council. The Committee makes no recommendation about how these changes should be introduced, but we do urge that they be made as soon as possible.

F. Appointments to Regulatory Agencies

Individual agency members are central to the successful achievement of regulatory objectives. Furthermore, a lack of public confidence in members of agencies could erode public confidence in the regulatory process itself. Comments we received during our public hearings reinforced our view that the process of appointments to agencies is an important issue in the reform of the regulatory process.

Anticipating recommendations made below regarding improvements in the process of appointments to regulatory agencies, we wish to emphasize that the final responsibility for making appointments must continue to reside with the Governor in Council. The spirit in which we offer the following recommendations is that this responsibility could be discharged more effectively through a systematic process for appointments that includes wider consultation than is presently the case.

Before describing in more detail recommendations to establish a formal appointment process, the Committee wishes to record its concern regarding the length of time it is taking to fill vacancies within some federal regulatory agencies. One example that was brought to our attention existed in the CRTC where two vacancies had been unfilled for more than 18 months. Vacancies must be filled more quickly than that, and the processes that are eventually put in place must ensure that unnecessary delays are avoided.

Recommendation 13: We recommend that, in appointing members to regulatory agencies, there be a consultative process that includes the following:

(a) consultation with the Chairman of the regulatory agency;

(b) preparation of a job description for the position;

(c) public notice of the vacancy and the means by which representations can be made; and

(d) establishment of a talent bank containing the names of qualified persons who could be considered for appointment to regulatory agencies.

The members of a regulatory agency are in an excellent position to identify the qualities that potential appointees should possess. The Chairman of the regulatory agency in which a vacancy will arise should be among the first consulted. The Chairman can provide useful information on whether the current job description is accurate. If it is not, it can be brought up to date to reflect current needs.

At an appropriate time prior to the resignation or retirement of the incumbent, a public notice should be issued and given wide circulation. The interested public must be made aware of the vacancy and the process of the appointment of a new agency member. This will be a critical step if the consultative process for appointments is to be effective. The availability of a mailing list developed by the affected regulatory agency could greatly assist Government in giving public notice. One way to give public notice would be for the Government to provide the agency with the material to be communicated, and the agency to use its public notice procedures.

As an ongoing exercise, the Government should also engage in a public notice process to obtain the names of qualified Canadians for inclusion in a talent bank. The availability of such a talent bank

could go a long way toward ensuring that the appointment process is conducted in as timely a fashion as possible.

In drafting the desired qualifications for the filling of a particular vacancy in a regulatory agency, factors such as technical or professional training will be important. The Committee does not consider that individuals should be appointed to represent a particular interest. Furthermore, these features must not be to the exclusion of more general factors such as regional representation. The Committee has been impressed with the wide range of decisions that regulatory agencies must make. Some of those decisions have only narrow, local ramifications, but others have national implications.

Recommendation 14: We recommend that regulatory agencies benefit from balanced regional representation and conduct their affairs so that, collectively, members of the agencies can better appreciate regional as well as national implications of their decisions.

A number of ways to meet the requirements contained in the above recommendation include:

—appointment of part-time members;

—the transfer of full-time members to areas outside the National Capital Region; and

—the convening of public hearings in various localities in Canada; or

—a combination of the foregoing.

It may not always be possible to find qualified individuals from the various regions in Canada to serve as full-time members on a federal regulatory agency. Part-time appointments, however, might overcome some of the difficulties. Alternatively, if there is sufficient "business" in a particular region of the country, the permanent location of a federal regulatory agency member in that region could enhance the agency's responsiveness to regional needs. The practice of conducting agency proceedings in the region most affected by the decision could be another means of meeting those needs. Representatives from the CRTC, the NEB and CTC provided the Committee with examples of these approaches, which we believe have merit. There will be other mechanisms as well. The essential point is that the utilization of these approaches will greatly assist in infusing the necessary regional values, thus improving the regulatory decision-making process.

The Committee was impressed with comments made by certain parties that the terms and conditions of employment for appointees to regulatory agencies are not sufficiently attractive and are preventing certain qualified people from even considering such an appointment. Two factors appear to be most prominent: salary levels, and portability of pensions and other long-term benefits from previous employment.

The Committee agrees that qualified people should be encouraged to consider appointments to regulatory agencies. We also see the need for impartiality that may be possible only through complete divestiture of assets connected with private industry, including pension plans, stock options and so on. We have not been able to study the matter in sufficient detail in the time provided to make substantive recommendations.

Recommendation 15: We recommend that the terms and conditions of employment for appointees to federal regulatory agencies be the subject of a separate study.

G. Procedures of Federal Regulatory Agencies

The manner in which regulatory agencies conduct their affairs bears directly on the quality of the regulatory process itself. Requirements that ensure basic fairness in agency proceedings were advocated by many witnesses. We recognize this need for procedural fairness.

The Committee was impressed with the diversity of the needs and requirements of different agencies and with examples of procedures that enable flexible approaches during public hearings. We have noted as well that a procedure that advances the hearing process in one regulatory agency might, in fact, prove to be counterproductive in another.

Recommendation 16: We recommend that each federal regulatory agency commence a proceeding through which each will establish rules of practice and procedure that are most appropriate to its proceedings.

We are confident that regulatory agencies, the respective industries they regulate, and the interested public together are in the best position to identify the procedures that are most appropriate to the affairs of a particular agency. The spirit of our recommendation in this area is analogous to that regarding consultation by government departments prior to undertaking regulatory activity.

The Committee makes this recommendation knowing that there is a successful precedent. The CRTC has already completed such an exercise with respect to its Telecommunications Rules of Practice and Procedure and is in the final stages of doing so with its procedures relating to broadcast matters. In both of those exercises, the CRTC engaged in a comprehensive process that included:

—public notice of the exercise;

—wide distribution of discussion papers;

—early opportunity for comment by interested parties;

—public hearings, with an opportunity to submit written briefs;

—release of draft rules; and

—further opportunity for comment before adopting final rules.

We consider the CRTC review process to be one that could be adopted by other federal regulatory agencies.

The development of rules of procedure should deal with issues such as giving notice of proceedings, ensuring that a full range of information is available to the agency, and requiring the agency to provide adequate reasons.

Once this procedural review exercise has been completed and the various regulatory agencies have established procedures appropriate for the conduct of their affairs, common elements could be examined to determine if a statute providing for generalized agency procedures should be established.

VI THE ROLE OF PARLIAMENT IN THE REGULATORY PROCESS

A. Introduction

The Committee believes that Parliament has a necessary and legitimate role to play in ensuring accountability for regulatory action. However, it is evident that Parliament has not properly equipped itself to carry out this role. If the full measure of benefit from regulatory reform is to be attained, parliamentary reform will be necessary.

The published views of academics, politicians, and advisory bodies regarding the role of Parliament in the regulatory process were known to us before we began our work. What we did not know was how the people felt. We did not conduct a scientific poll nor can we claim to have heard from a cross-section of Canadian society. Nevertheless, we believe the information we received is significant and deserves emphasis. We found widespread and strong support in both the private sector

and in the federal government for the principle of a heightened role for Paliament. The people we talked with were interested in the issue, concerned with the present state of affairs, and supportive of change.

There are obstacles in the way of parliamentary reform; however, there is reason to be encouraged. We sense there is growing support for significant reform among members of all parties in the House of Commons. We believe that the Government is receptive to the idea as well. And we know, from our hearings and from the submissions we received, that the public expects more from parliamentarians and that it expects us to make some changes.

The Committee decided that although it could not single-handedly solve all the problems and clear away all the obstacles facing parliamentary reform, it could support and attempt to accelerate the process that has already begun. We decided that we could best contribute by:

—stating the arguments in favour of a heightened role for Parliament in the regulatory process;

—discussing the practical limitations on the extent of parliamentary involvement in the regulatory process;

—identifying related issues of parliamentary reform that should be considered if Parliament is to assume greater responsibility in this area;

—recommending functions that should be performed on a long-term basis by Parliament in relation to regulatory activity provided that reforms of Parliament and its committees are carried out; and

—recommending interim measures that would allow Parliament to become more involved in the regulatory process pending implementation of parliamentary reforms.

B. The Need for Greater Parliamentary Involvement

Parliament has supreme authority to make laws regarding matters reserved to it under the *British North America Act*. Increasingly, Parliament has delegated considerable legislative power to the Government and has authorized extensive regulatory activities in a wide variety of areas. Neither the exercise of delegated legislative authority nor the administration of regulatory activity is necessarily subjected to parliamentary scrutiny under present rules and practices. We believe such scrutiny to be a responsibility of Parliament, which must be able to hold the Government accountable for its regulatory actions.

Increased parliamentary involvement in the regulatory process has been recommended in a number of studies and reports, including those of the Standing Joint Committee on Regulations and other Statutory Instruments, the Economic Council of Canada, the Royal Commission on Financial Management and Accountability (the Lambert Commission), and the Special Committee on Statutory Instruments (the MacGuigan Committee).

The need for greater parliamentary involvement was also supported by a number of witnesses who appeared before us. Some suggested, for example, that persons be able to bring their grievances to Parliament through its committees and that the committees be able to respond to these concerns.

C. Practical Limitations on Parliamentary Involvement

We are convinced from what we have been told and from our experience working in this Committee, that parliamentarians can contribute more to the regulatory process than they do at present. We must report, however, that the general support we found for greater parliamentary involvement in the regulatory process was tempered by the concern expressed by many witnesses that

taking on additional functions could, in the long run, be counterproductive. We were cautioned against recommendations that would simply add to the present overload of Parliament and unjustifiably slow progress on the matters that require its approval. We recognize as well that enhanced accountability to Parliament would impose additional obligations on the Government.

Officials in almost all the departments we heard from characterized Parliament as a bottleneck. Significantly, this view was shared by many private sector interests as well. We were advised that some departments had been waiting for as long as four years simply to get bills of "lesser priority" before Parliament. In some cases, measures that might have reduced the burden of federal regulation on the private sector have not been implemented for lack of parliamentary consideration and approval. The parliamentary bottleneck provides further incentive for the Government to include broad delegations of legislative power to ministers, regulatory agencies, and the Governor in Council in new regulatory statutes.

In advocating increased responsibility for Parliament in the regulatory field, it is obvious that Parliament could not review the policy or merits of every regulation promulgated by the Government. It is equally obvious that it could not conduct an inquiry into the regulatory processes of every department and agency, carry out detailed assessments of all regulatory programs, or even engage in detailed examination of the estimates and annual reports of every department. This unquestioned limitation on the resources of Parliament, however, should not be used as the basis for opposition to reforms that would facilitate Parliament's ability to carry out certain of these functions *on an exception basis*. Many of the witnesses who appeared before us advocated just such a selective role for Parliament.

D. Related Issues of Parliamentary Reform

Parliamentary involvement in the regulatory process is not prohibited under existing arrangements, it is simply not facilitated or encouraged. It is probably true that Parliament has not made full use of the opportunities that are open to it under existing procedures. For instance, questions regarding the progress of regulatory reform, the substance of specific regulations, the status of various regulatory processes, specific regulatory activities covered by a program evaluation report, or the substance of a policy directive could be raised during Committee consideration of the estimates of a department or agency. Opposition days could be devoted to debate on a variety of regulatory issues.

The Committee heard these examples raised as arguments in favour of the *status quo*. We were not impressed. The issue is not whether parliamentarians should be satisfied with existing procedures, no matter how imperfect. The issue is whether there are better ways for us to become involved in the federal regulatory process.

We believe that Parliament must play a greater role. Proposals for greater parliamentary involvement, however, cannot be considered in isolation from a host of very fundamental issues that concern the functioning of Parliament and its committees, as well as the relationship of Parliament to the Government. It would be self-defeating for Parliament to undertake new responsibilities in the regulatory area if, at the same time, it did not adopt new practices and procedures that would allow it to perform these functions effectively.

There are a number of matters that require consideration before any long-term arrangements for greater parliamentary involvement in the regulatory process would be practical, including:

—improved management of the time of the House and its committees;

—adequate staffing for parliamentary committees;

—committees proceeding on their own initiative without reference from the House;

—the optimal number of standing committees and the allocation of their responsibilities;

—the optimal number of members on committees;

—restriction of the right to make unlimited substitution of committee members;

—greater utilization of joint committees;

—remuneration for participation in committee proceedings;

—the role, responsibilities, and remuneration of committee chairmen; and

—use of subcommittees to greater advantage.

E. Role of Parliament After Reform

1. *General Comments*

It is our opinion that increased parliamentary involvement in the regulatory process without fundamental parliamentary reform might be counterproductive and could endanger long-term possibilities for Parliament to assume a heightened role. However, we do not wish our conclusions to be mistaken as a call for delay or for inaction. The need for parliamentary reform is pressing and we urge Members to treat it as a matter of the highest priority. As Parliament considers the many alternatives open to it, the functions that it might perform and the mechanisms that it might require, it should keep in mind the potential contribution that it could make by giving more attention to the regulatory activities of the Government.

2. *Recommended Functions For Committees*

We have identified three functions important to government regulation that might profitably be undertaken by parliamentary committees provided that needed reforms were implemented. They are to monitor regulatory processes of departments and agencies, review the policy or merits of regulations, and review regulatory activities using program evaluation reports as the basis for assessment.

(a) *Monitor regulatory processes*

The bulk of this Committee's work has focused on the processes by which decisions are made concerning federal regulation. We have become convinced that improvements in these processes will result in improvements in the substance of regulation. New procedures might not always work properly, however, and they may need readjustment from time to time. Parliament could be of considerable assistance to both the Government and to the public if it maintained a watchful eye over the regulatory processes used by federal departments and agencies.

(b) *Review the policy or merits of regulations*

The Standing Joint Committee on Regulations and other Statutory Instruments reviews regulations and other published statutory instruments using criteria that relate to the legality and propriety of the measures examined. There is, however, no analogous arrangement facilitating parliamentary examination of subordinate legislation from the point of view of policy or merit.

Many, perhaps even most, regulations will not be of major importance and will warrant little or no attention from Parliament. However, some regulations will embody significant policy choices that might have a profound impact on the private sector. Parliament should be able to examine and report on these. The need is particularly acute if Parliament has not been able to debate the policy during consideration of the enabling legislation or if the enabling section in the statute contains a broad grant of legislative power.

Parliamentary review could occur either before or after a regulation becomes law. Reviewing regulations before promulgation would be facilitated if a federal regulatory agenda were developed and if prepublication of draft regulations were to become more widespread. A major advantage of such review would be the ability to identify and find solutions to problems before they become enshrined in law. Ensuring the ability to review regulations at any time after they have become law would help to clean up the vast stock of existing regulations by identifying those that are unnecessary, outdated, or overly burdensome.

(c) *Review regulatory activities*

One function that has been recommended by a number of independent advisory bodies, as well as by the Standing Joint Committee on Regulations, and that has been supported in principle by the past two Governments, has been parliamentary review of specific departmental and agency activities using program evaluation reports as the basis for assessment.

The program evaluation system administered by the Office of the Comptroller General was discussed in Part III of this Report. It is the Committee's understanding that program evaluation reports prepared by departments and agencies would be available to the public under the proposed access to information legislation now before Parliament.

Parliament could utilize internal program evaluation reports as the basis for review of the regulatory activities carried out by a particular department or agency. Since these evaluations might focus on internal management concerns, however, they might not answer questions that are of most interest to parliamentarians. A better approach might be for the Government to carry out special evaluations in accordance with the directions of Parliament. This would ensure that the issues Members of Parliament feel are most important would be addressed.

Recommendation 17: We recommend that, when necessary parliamentary reforms are achieved, the Standing Committees of the House of Commons be authorized to perform the following functions on their own initiative without reference from the House:

(a) monitor the regulatory processes of federal departments and agencies;

(b) review the subject matter of new subordinate legislation as to policy or merits; and

(c) review specific regulatory activities of federal departments and agencies utilizing program evaluation reports.

We wish to reiterate that the functions discussed above would have to be carried out *on an exception basis* and would form only part of the total mandate given standing committees. It would be the responsibility of the committees to establish priorities and to determine which of the functions, if any, they might perform during a session. As is the case now, priority would have to be given to government business such as bills and estimates. Based on our experience in this and in other committees, we are confident that Members would be able to reach agreement on and carry out reasonable work plans.

F. Role of Parliament Before Reform

1. *A Special Committee on Government Regulation*

Although we do not favour permanent arrangements for parliamentary involvement in the regulatory process until certain fundamental reforms of the existing committee system have been accomplished, we believe that Parliament should not delay in establishing a greater presence in the area of government regulation. There is an immediate need for its involvement.

Parliament could help advance regulatory reform by showing interest and by asking the right questions at the appropriate time. At the same time, it could experiment, on a limited basis, with certain of the functions that might be performed in relation to regulatory activity. Finally, it could gain experience with and test new arrangements and procedures that might eventually be utilized by all committees after parliamentary reform has been carried out.

We believe that a period of testing and experimentation would be most valuable before major reforms of Parliament are implemented. We also believe that greater parliamentary involvement in the regulatory process is long overdue. Consequently, we see considerable merit in establishing, for a limited period, a Special Committee on Government Regulation.

Recommendation 18: We recommend that a Special Committee on Government Regulation be established to function until required parliamentary reforms are implemented.

2. *Mandate of Special Committee on Government Regulation*

(a) *General functions*

The primary mandate of the Special Committee on Government Regulation should be to monitor regulatory reform and to generally oversee the regulatory activities and processes of federal departments and agencies.

(i) *Monitor regulatory reform*

The response of the private sector to the creation of our Committee and to its work confirms that regulatory reform continues to be a matter of significant concern and that it deserves continuing attention by Parliament. The Government is presently faced with a number of reports containing proposals relating to regulatory reform, and now is receiving ours. A Final Report by the Economic Council of Canada on the Regulation Reference is expected shortly.

It is time for the Government to take action and for Parliament to oversee the process of reform. A good way to begin might be for the Minister responsible for regulatory reform to present in the House a detailed explanation of the Government's overall reform program, specifying its objectives and timetable. The Special Committee on Government Regulation could then assess progress using the Government's own work plan as a yardstick. As reforms take root, the Committee could turn more of its attention to the other functions identified below.

(ii) *Oversee regulatory activities and processes*

We outlined the rationale for facilitating parliamentary oversight of regulatory processes in our discussion of long-term parliamentary functions. Most reform activities occurring during the life of the Special Committee on Government Regulation would likely focus on improvements in regulatory processes. As a consequence, we consider this aspect of the mandate to be closely linked to the function of generally monitoring regulatory reform initiatives.

In practice, it may prove difficult, if not impossible to separate the "process" from the "substance" of regulation during parliamentary review. The Special Committee's terms of reference, therefore, should not preclude it from examining the substance of regulatory measures when necessary. Examining the policy or merits of regulations should not, however, be the primary focus of the Committee's activities. We reiterate our belief that the greatest long-term benefits of regulatory reform will flow from having better processes in place.

(b) *Mandatory functions*

In addition to its general functions of monitoring regulatory reform and overseeing regulatory activities and processes, the Special Committee on Government Regulation should carry out three

tasks that would be linked specifically to the objectives underlying its establishment. These three tasks would be to review the policy or merits of regulations, to review regulatory activities using program evaluation reports, and to report on certain matters.

(i) *Review the policy or merits of regulations*

The Special Committee on Government Regulation should be asked to carry out a limited number of reviews of the policy or merits of subordinate legislation. There are several important qualifying features that should be noted. First, the review should be performed after the regulations have been promulgated. Second, the Committee's job should simply be to examine and report to the House; we do not recommend the establishment of affirmation or disallowance procedures. Third, to compensate for the fact that members of the Committee would not likely have experience or expertise in all fields from which they might choose regulations for review, membership of the Committee should be expanded during the performance of this function by adding members from the appropriate standing committee. The additional members should serve on an *ex officio* basis, as under existing procedures.

(ii) *Review regulatory activities*

The Special Committee should also be required to carry out a limited number of reviews of existing federal regulatory activities utilizing a program evaluation report as the basis for each assessment. Again, for the reasons stated above, the membership of the Committee should be augmented for this purpose by adding members from the appropriate standing committee.

Selection of the regulatory activities to be reviewed should be made by the Special Committee in consultation with the affected departments or agencies, as well as with the Office of the Comptroller General. We suggest these reviews be based on special evaluations carried out for the Committee by the Government.

The Special Committee should, in selecting activities for review, consider the schedule for internal program evaluations within each department and agency. Since the evaluation reports requested by the Committee would take time to prepare, it is likely that the reviews would be carried out in the latter part of its mandate.

(iii) *Specific reports*

The Special Committee on Government Regulation should be asked to report to the House on certain matters relating directly to the reasons underlying its establishment. The Committee has been proposed to allow experimentation with functions that might be performed in the field of government regulation. It should report on its experience with these functions. The Committee has been proposed to allow testing of practices and procedures that might be adopted by standing committees after parliamentary reform. It should report on its experience in this area and on methods to facilitate parliamentary review of federal regulation in general. Finally, the Committee has been proposed to create a focal point in Parliament to ensure that the Government is held accountable for regulatory reform. It should report on the Government's progress in achieving meaningful regulatory reform.

Recommendation 19: We recommend that the Special Committee on Government Regulation monitor the Government's progress in implementing regulatory reform and oversee the regulatory activities and processes of federal departments and agencies. In addition, it must:

(a) in each year of its operation, review and report on the policy or merits of not less than three sets of regulations;

(b) in each year of its operation after the first year, review and report on two regulatory programs of the Government, utilizing as the basis for its assessment, special

program evaluation reports to be prepared by the Government in accordance with the Committee's request; and

(c) report on the following matters:

(i) the Committee's experience with functions that it has performed relating to federal regulatory activity;

(ii) the Committee's experience with factors affecting its operation including staffing, size of membership, and restrictions on substitution of members;

(iii) methods to facilitate parliamentary review of federal regulation in general; and

(iv) the progress made by the Government in implementing regulatory reform.

3. *Features of the Special Committee*

(a) *Membership*

Based on the operation of our own Committee, we believe there are many advantages to be gained from keeping committees to a manageable size. Although our Committee functioned effectively with seven members, we believe that ten members would be appropriate for the proposed Special Committee. We further believe that restricting the practice of substituting members would be beneficial. Accordingly, no substitution should be allowed without motion of the Committee. Finally, as we have noted above, we believe that membership of the Committee should be expanded during the performance of certain functions when the subject matter under consideration falls within the purview of a standing committee. We suggest that three members from the appropriate standing committee, one from each party, join the Special Committee as *ex officio* members.

(b) *Staff*

Again, based on our own experience in dealing with the topics of government regulation and regulatory reform, we believe that it will be necessary for the Special Committee to have the benefit of expert staff. There are a variety of ways in which expert assistance could be obtained. Because the Committee is intended as an interim, experimental measure, the use of short-term consulting arrangements combined with the services of the Research Branch of the Library of Parliament might be considered. The Special Committee should be free to select and experiment with different arrangements.

(c) *Termination*

We are confident the experience gained through the activities of the Special Committee that we have proposed would assist Members in assessing the functions that could be performed and the arrangements that would be necessary to make them work well in a revised system of parliamentary committees. We recognize that there may be some reluctance to establish a new permanent committee that would likely have to be dismantled when major reforms are achieved. For this reason, we suggest that the Special Committee "sunset" after a fixed period of time. This period would, we hope, coincide with the time necessary to reach agreement on and implement the fundamental parliamentary reforms we believe are desirable. If reforms are achieved more quickly, the Special Committee should terminate at that time.

We believe that the creation of the Special Committee would in no way slow down the progress of parliamentary reform. On the contrary, it would be an excellent means of pretesting, on a limited basis, a number of reforms for the operation of committees.

Recommendation 20: We recommend that the Special House Committee on Government Regulation:

(a) be comprised of not more than ten members and that no substitution of members be allowed without motion of the Committee;

(b) be expanded by not more than three *ex officio* members, such members to be selected from the appropriate standing committee, and to serve in connection with the review on policy or merits of regulations and review of regulatory programs (Functions (a) and (b) in Recommendation 19);

(c) be authorized to hire staff;

(d) be terminated automatically two years after its creation or sooner if required reforms to the committee system of the House of Commons are made.

G. Further Observations on Parliamentary Involvement

1. *Role of Parliamentary Secretaries*

As a rule, the authority to make regulations under federal statutes is given to the Governor in Council. In reality, it is Cabinet that controls this power. In practice, approval by four members of Cabinet is required for proposed regulations. We recognize that members of Cabinet face heavy workloads. It would be unreasonable to expect them to be able to scrutinize in detail the multitude of regulations advanced by federal departments and agencies.

The Province of Ontario has adopted an approach to ensure that regulations proposed in that Province receive adequate scrutiny by elected officials. A "Regulations Committee", comprised of parliamentary assistants to ministers and chaired by the provincial minister responsible for regulatory reform, examines regulations before they are submitted to the Ontario Cabinet for final approval.

This Committee, which meets once a week, requires sponsoring departments to provide information on matters such as the need for the regulation, the alternatives to regulation that were considered, and the potential for overlap or duplication. Significantly, the Ontario Regulations Committee often asks for details of the consultation that a department has undertaken on an initiative. If the Committee is not satisfied with the answers, the proposed regulation will generally not go forward to Cabinet for approval.

The Government of Ontario advised us that this system has worked well and that it has improved the management of government regulation in that Province.

2. *Reviewing the Legality and Propriety of New Regulations*

Since 1974, the Standing Joint Committee on Regulations and other Statutory Instruments has reviewed regulations and other published statutory instruments using criteria relating to the legality and propriety of the measures examined. This function is essential if Parliament is to hold the Government accountable for the exercise of delegated legislative authority. Unfortunately, due to legal technicalities in the *Statutory Instruments Act*, not all subordinate legislation is subject to scrutiny by the Standing Joint Committee. There appears to be a gap in the coverage of the relatively limited parliamentary review that now exists. We do not understand why, despite repeated calls for change by the Standing Joint Committee, this problem has not been resolved.

3. *Reviewing Annual Reports*

Several bodies, including the Royal Commission on Financial Management and Accountability, have proposed that the annual reports of departments and agencies be permanently referred to

parliamentary committees for review. Annual reports should provide useful information on all aspects of an organization's activities and should, therefore, be an excellent foundation for parliamentary review. Unfortunately, we have found that the annual reports of federal departments and agencies vary considerably in quality and in the type of information provided.

Our recommendations for improving annual reports with respect to regulatory activities are detailed in Part IV. If the type of information we have suggested regarding regulatory activity is provided, a permanent reference of annual reports to the appropriate standing committees would greatly facilitate parliamentary review and help ensure accountability.

VII PUBLIC INTEREST GROUP FUNDING

A. General Comments

The Committee was impressed with the number of witnesses who summarized the mandate of a regulatory agency as being to act "in the public interest". There was also considerable agreement among private sector interests that the public interest was composed of a multitude of private interests and that no one interest itsef constituted "the public interest". To reinforce this point, consumer and public interest groups themselves disabused us of the view that they represent "the public interest". These groups did, however, impress upon us that they represent interests that traditionally have not been in a position to make representations to decision makers in the regulatory context.

B. Core Funding for Public Interest Groups

Recommendation 21: We recommend that public interest group participation in the federal regulatory process be encouraged and supported by higher levels of financial assistance.

The Committee is clearly of the view that public and consumer interest group participation in the regulatory process should be encouraged. The groups, the agencies, and business representatives persuaded the Committee that these groups generally acted responsibly and that their representations have been positive and beneficial.

This positive view of the value of public interest group participation in the regulatory process is not mirrored, however, in the degree to which the groups are able to finance their activities. The inability of these groups to obtain funding from their membership or financial assistance from the public sector is a matter of concern to the Committee.

The Committee has also observed that the current state of public interest group funding has meant that the groups have had to select between appearances in public hearings by regulatory agencies and participation in broader consultative activities conducted primarily by government departments. Therefore, public interest groups have focused almost all of their resources on advocacy-oriented matters. In view of our belief that early consultation will result in better regulation, we believe that public interest groups should also participate in the consultation process, which again requires funding.

The ideal solution would be for public interest groups to become self-financing. We recognize, however, the very real problems that arise as a result of a lack of incentive on the part of the general public to support the groups financially. There is the problem of small financial amounts being at stake for individuals consumers. Even if individuals do not contribute to a public interest group, they will still benefit from the groups' activities. In short, the positive results of public interest group activity generally are to the benefit of the public at large. This appropriately named "free rider" problem (see Glossary) is a definite impediment to the groups' achieving any degree of financial self-sufficiency.

We believe that public interest groups should receive funding from the public sector in order to pursue their activities, and that funding levels for public interest groups should be increased. This higher level of core funding (see Glossary) will enable the groups to choose from and participate in a wider range of regulatory activities than at present.

Recommendation 22: We recommend that, pending completion of the study called for in Recommendation 24, increased levels of funding for public interest groups be provided by government departments and agencies.

The Committee has been impressed with the degree to which the Department of Consumer and Corporate Affairs has assisted public interest groups with various funding programs. The variety of issues and regulatory activities, however, may militate against one department's carrying the burden for funding. The Committee is of the view that government departments should fund groups that have a particular interest in matters that are related to their activities.

A current activity of the Department of the Environment is an excellent example of this. The Department's proposals for improving its consultative process include the establishment of criteria for groups that will be assisted financially in making representations. This proposal for providing financial assistance is being discussed in consultation with affected groups and associations.

We recognize that federal departments and agencies are now operating under budgetary constraints. Nevertheless, we believe that reasonable funding to support public interest participation should be a matter of high priority.

C. Cost Awards

New mechanisms must be found in order to achieve a greater level of participation by public interest groups in proceedings conducted by regulatory agencies. One of the mechanisms that witnesses described to the Committee was the reimbursement of some or all of the expenses incurred in order to participate. The actual payment is usually described as an award of costs (see Glossary) to the intervening group.

Recommendation 23: We recommend that the practice of awarding costs to public interest interveners in proceedings before federal regulatory agencies be expanded.

Under the CRTC Telecommunications Rules of Practice and Procedure, public interest groups may apply for costs in advance of a particular public hearing, with the costs being reviewed and possibly supplemented at the end of the hearing. While the CRTC makes the decision regarding costs to interveners, the actual funds are paid by the company being regulated.

The CRTC is the only federal regulatory agency that awards costs to interveners. We understand that the CTC operates under the same legislative provision, but interprets it differently. Without wishing to express a legal opinion, we favour an interpretation that permits cost awards. The Government should clarify this issue and take the necessary steps to permit other regulatory agencies to award costs.

D. Eligibility Criteria

The establishment of eligibility criteria for funding public interest groups is important for three reasons. First, there is a duty to ensure that funds are expended responsibly. Second, there is a need to address the concern that funding might lead to a proliferation of participants in regulatory proceedings, duplication of efforts, and unduly protracted proceedings. Third, we are concerned about any new programs that would impose additional financial demands on government.

We do not believe that the development of criteria for the funding of public interest groups is an overwhelming task. We can refer once again to the example of the CRTC and its costs awards in telecommunications hearings. The criteria established by that Commission in consultation with public interest and industry groups included matters such as the group's,

—being representative of a group or a class of subscribers (of telecommunications services) that has an interest in the outcome of the proceedings;

—having participated in a responsible way; and

—having contributed to a better understanding of the issues by the Commission.

The brief submitted to us by the Department of Justice provided an enumeration of public interest group funding criteria, including the following:

—the representative nature of the applicant for a cost award;

—the specific purpose of the assistance being sought and substantial interest in the outcome of the proceedings;

—whether the relief, remedy or other order sought represents a benefit to the group making the application or to the public as a whole;

—whether the effect of granting the funding requested may be of help to redress an apparent economic imbalance;

—the availability of alternative sources of funding;

—the past record of performance, if any, of the group and the competence of the group to represent its interest effectively;

—the merits of the matter on which the group wishes to make representations;

—whether the group's interest is already represented or likely to be represented by some other person or group in the same or a comparable proceeding;

—the importance of the issue at stake; and

—the probable cost, taking into account the ability of the group to contribute.

We have not made firm recommendations regarding the criteria to be applied by the various departments and agencies that we believe should fund public interest groups. Rather, the departments and agencies should engage in a consultative process with interested parties to establish criteria that would be appropriate to their particular activities. Although the criteria that have been brought to our attention have been developed in the context of regulatory agency proceedings, we believe they will be of assistance to departments as well.

E. Methods for Providing Funding

While experience is being gained with methods of funding public interest groups as recommended, studies should be conducted to establish which methods are the most effective. These studies would be directed at issues such as central agency funding and the success or failure of the funding practices that develop. These studies should be conducted in conjunction with and not be a substitute for the establishment of new public interest funding programs.

The Consumers' Association of Canada brought to our attention the fact that the groups themselves have been making proposals to remedy their current financial problems and dependence on public founds. In particular, our attention was drawn to the work of the Coalition of National Voluntary

Organizations. This body has presented a proposal to the Government for amendments to the *Income Tax Act* that would expand incentives for taxpayers to financially support voluntary organizations. Other techniques that would help public interest groups become self-funding should also be explored, along with measures such as matching grants that would buttress private fund-raising initiatives.

Recommendation 24: We recommend that the Government conduct a study of the most appropriate means of funding public interest groups, including the use of tax incentives and other methods of increasing financial support for these groups.

VIII ACCESS TO INFORMATION

A. General Comments

The Committee believes that access to information is a key feature of regulatory reform. Both improved consultation and advance notice are features of openness and better exchange of information between the private sector and government. We are pleased to note that legislation relating to access to information is now before Parliament and we urge that the bill be given prompt consideration. While any statute imposing criteria for access to information would set minimum standards, individual departments or agencies may wish to provide greater access to information in certain circumstances.

The Committee commends the approach taken by the CRTC in this matter. The Commission will prevent disclosure only if it would cause specific direct harm that would outweigh the benefits of disclosure to the public. The CRTC has recognized the role that increased access to information plays in enhancing the quality of representations made in the regulatory process.

We believe that individual departments and agencies should develop their own guidelines for release of information. These guidelines should take into consideration the needs of the department or agency in formulating policy and developing regulations, as well as the needs of both those who supply and request information.

The Committee further suggests that any guidelines for release of information should cover such matters as representations made during the consultative process or information collected from the private sector in the course of performing a program evaluation or an impact assessment. Guidelines should be public. Any agreements that a department or agency makes with a private party to keep information secret should be based on previously articulated criteria. Having made such an agreement, the department or agency should ensure that confidentiality is not breached since this could severely impair the confidence of the private sector in government.

While the Committee understands the need to maintain confidentiality in certain situations (e.g., trade secrets, competitive information, policy advice to ministers, etc.), we believe that the regulatory process can only be enhanced by a greater flow of information among regulators and interested parties.

B. Index to Information

It may not be sufficient to merely establish a right of access to information. It is also important to provide practical means by which information may be obtained. In a regulated environment, one must have reference to statutes, regulations, court decisions and a host of documents issued by the various departments and agencies, such as decisions, policy papers, information circulars, and interpretation bulletins.

The problem of finding the law or relevant information that applies to a particular issue is a difficult task even for lawyers. Consider the task of identifying the laws, regulations, and other materials that apply to any one subject. An official from the Government of Ontario indicated that it took them several months to find out that there are 150 different pieces of legislation governing the keeping of records in the private sector.

Relating that story to the federal jurisdiction, it should be noted that an individual is now faced with over 13,000 bilingual pages of federal legislation, and the total is increasing. For example, the printed volume of statutes passed in the Third Session of the 30th Parliament (1977-78) contains 1003 pages of legislation; the volume for the Fourth Session (1978-79) contains 384 pages. The regulations promulgated under federal statutes are found in approximately 14,000 bilingual pages of the Consolidated Regulations of Canada (1978). The Canada Gazette, Part II, in which new regulations and other subordinate legislation are published, currently totals slightly under 5,000 pages per year.

The decisions of regulatory agencies at the federal level are generally not published, although some agencies do issue an annual volume containing all the decisions issued in the previous year. As a result, there is no estimate available for the annual number of decisions by the various regulatory agencies. In addition, it is difficult to find all the judicial appeals from agency decisions in the over 7,000 judicial decisions reported in Canada each year.

Recommendation 25: We recommend that statutes, regulations, decisions, and other material be indexed to provide easy access to the various laws and other material that are relevant to a particular subject.

The Committee learned that the Canadian Law Information Council is currently engaged in a project to produce topical indexes for the statutes and regulations of Alberta, British Columbia and Ontario. The Uniform Law Conference of Canada has approved in principle the development of an automated central indexing agency to produce standardized topical indexes for statutes and regulations.

The lack of indexing and organization of statutory materials has forced the private sector to undertake this work on its own. For example, the Canadian Advertising Advisory Board informed the Committee that it is completing a manual that will bring together all legislative and regulatory provisions relating to the advertising industry.

The situation with respect to the publication of decisions of federal regulatory agencies is comparable to that described above with respect to statutes and regulations. No federal regulatory agency publishes all of its decisions on a timely basis with indexes and references. Moreover, the manner in which decisions are published varies widely. The CRTC publishes its decisions in Part I of the Canada Gazette, which is available by subscription. This publication, however, is not indexed. The CTC has published an indexed volume of selected decisions, but publication is intermittent (the most recent volume is 1977). An individual searching for a decision of a regulatory agency has a difficult task and is put at a disadvantage compared with someone who monitors the agency's proceedings and decisions. The decisions of regulatory agencies should be published and be accessible through an organized and systematic index.

The development of computerized systems has the potential to make the current unwieldy mass of legal information much more manageable and accessible. If the information we described were stored in a computer data base accessible through the Canadian Videotex system, Telidon, interested individuals could more easily obtain the information they seek. The Telidon system, which was developed by the Department of Communications, has an enormous potential to aid citizens seeking government information under new access to information laws.

IX ALTERNATIVES

A. Voluntary Self-regulation

The Committee has urged that departments and agencies look at alternatives other than regulation when they are faced with certain problems. Some witnesses who appeared before the Committee were convinced that government reaches too quickly for the tool of regulation and that this attitude is summed up by the statement, "there ought to be a law . . .". We recognize that this may often be true, and we hope that implementation of our recommendations dealing with consultation and impact assessments will foster the consideration of nonregulatory alternatives, including self-regulation.

The Committee understands that not all situations are amenable to self-regulation. In some cases, it would be impossible to enforce such measures. In other cases, the costs resulting from noncompliance are considered too high for society to tolerate—this is particularly true in certain areas of health and safety. However, the fact that health and safety are involved does not automatically eliminate the possibility of self-regulation. The Department of National Health and Welfare, Health Protection Branch, provided us with several examples of the use of guidelines rather than regulation. Regulation may not be required, for example, when there are only a few manufacturers and they all agree to meet a certain standard or follow guidelines. Peer pressure and competition may then substitute for regulation.

B. Consensus Standards

The Committee was particularly impressed by the procedure through which consensus standards are developed, whether or not they are made mandatory by being referenced into regulatory legislation. Under this procedure, standards are set by panels made up of representatives of various groups. Manufacturers, government departments (often both federal and provincial), technical experts, labour groups, and consumers might sit on these panels. As the Government is only one among equals, the consultative process is carried to its fullest. Any standard that is developed by a panel represents the consensus of the panel. The procedure does not require unanimity, but it does provide that all viewpoints must be heard and considered. A minority view cannot be ignored. Indeed, because there is often an on-going process of review, views may shift.

An advantage ascribed to a consensus approach to standards setting is that a higher degree of compliance will be achieved. When those who have to meet the standards are involved in the process by which they are developed, there may be a greater psychological incentive to comply. There is likely to be more input from the private sector than in other consultation situations. Mutual understanding and refinement of the standard to produce the least burden should lead to more willing compliance.

The cost to government of developing a standard may be lower under the consensus process. Most standards-writing associations work on a cost-recovery basis, that is, the costs of setting the standard are borne by the members. In some cases, governments have contracted with standards associations to develop standards. The Canadian Standards Association, for example, has entered into a contract with the Department of Energy, Mines and Resources and the National Research Council to prepare standards on solar collectors.

The consensus process is time consuming, generally taking about two years to complete. Two years, however, is not radically different from the length of time it takes many departments to develop a regulation, although circumstances obviously vary. It is possible to develop a consensus standard more quickly in emergency situations. The Canadian Standards Association delivered a standard on seat belts within three months, for example. Nonetheless, there may be situations in which the Government must act so quickly as to preclude the use of the consensus process.

Some have expressed concern that a consensus standard might represent the "lowest common denominator", the standard that is acceptable to the least exacting member of the panel. Since consumer groups and government representatives sit on consensus panels, however, it is unlikely that an inappropriately low standard would result.

Once a standard has been developed by consensus, it may be applied voluntarily or it may be incorporated by reference into regulatory legislation. If it is incorporated in such a manner that it changes as the standard developed by the consensus body changes, there may be legal problems of sub-delegation and lack of accountability in the regulation-making process. In effect, the consensus body is performing a legislative function. The degree of involvement by the Government in the continuing process and the review of any changes by responsible government officials may determine the validity of these objections.

It is, of course, always open to the Government to reject a standard once it has been established by a consensus body and establish its own standard by regulation. This in fact happened in the case of standards for infant car seats. Even in this situation, however, the Government has had the advantage of listening to all the other interests who participated in the consensus process.

Recommendation 26: We recommend that departments consider the use of the consensus process whenever they have determined that a regulatory standard is an appropriate policy.

We would like to note, however, that this does not mean that we would abandon our stress on the importance of disciplined thinking in the regulation-making process. We commend the use of cost-benefit analysis by the Canadian Standards Association and we would like to see the sort of analytical thinking that considers the advantages and disadvantages of a regulation stressed by all in the consensus process.

The Committee also notes that a consensus standards panel that includes representatives from more than one government may provide a forum for the harmonization of legislation and the elimination of conflict that we consider to be so important. Consensus standards may thus provide a way of lessening a particularly irritating burden on the public.

X PAPERBURDEN AND SERVICE TO THE PUBLIC

A. General Comments

The Committee has been made aware of the problems that paperburden creates for the private sector. A number of witnesses pointed to the substantial costs that individuals and businesses must incur in order to comply with government reporting and record-keeping requirements. We believe that these costs represent a very real part of the regulatory burden borne by the private sector.

The Committee has also heard that individuals and businesses in the private sector often encounter significant inconvenience in gaining access to government information and advice and in obtaining government services. Despite some efforts that have been taken to improve the situation, the Government is frequently perceived to be confusing, unresponsive and indifferent. The Committee believes that difficulties in gaining access to the Government and in obtaining prompt and satisfactory service are important aspects of the general burden that government operations place on the private sector.

We are firmly convinced that a significant feature of the Government's attempt to reduce the burden of regulation on the private sector must be continued action in the fields of paperburden and service to the public. There is clearly a substantial potential for positive reform in these areas.

B. Paperburden

The Committee commends the Government and its officials for the initiatives they have undertaken in connection with the paperburden problem. The Office for the Reduction of Paperburden, established in 1978, has proposed two major sets of reforms. The first was an action program for the reduction of paperburden. It was estimated that the changes identified would save the private sector approximately $100 million per year. Unfortunately, a substantial percentage of these savings has not been realized because it is tied to statutory amendments that have not yet been approved by Parliament. Appropriate amendments to the *Customs Act*, the *Statistics Act* and the *Corporations and Labour Unions Returns Act* would substantially reduce costs for individuals and businesses.

The Office for the Reduction of Paperburden's second set of recommendations was aimed specifically at the problem of records retention and is expected to result in savings of $200 million per year. These proposals were recently given Cabinet approval. We urge the Government to implement them as quickly as possible.

Recommendation 27: We recommend that the Government place high priority on continued efforts to reduce paperburden and that it take prompt action to ensure passage of the statutory amendments necessary to help accomplish this goal.

C. Service to the Public

We were impressed with the initiatives that the Governments of Nova Scotia and Ontario have taken in providing better service to the public. Officials from both Provinces appeared before the Committee and explained that their governments have placed strong emphasis on improving the delivery of government services to the public. In Ontario, this orientation has influenced the government's entire approach to regulatory reform.

The Committee feels that it is important for the Government to see itself as providing a service to the public and that it orient itself accordingly. We believe that a government should regard citizens as customers and should attempt to ensure that they can obtain service and gain access to information with a minimum of inconvenience. It is essential that citizens receive prompt responses to their requests and inquiries. They should be able to easily identify officials whom they can contact about problems and who have responsibility for making decisions.

The federal government also has been taking steps to improve service to the public and the Committee strongly endorses the work that has recently been done in this area. A Task Force on Service to the Public, presently operating as part of the Department of Supply and Services, has undertaken a number of initiatives designed to make the federal government more accessible. Among other things, telephone access to the Government has been improved and a comprehensive index of government services has been developed. The Task Force is also taking steps to improve the actual delivery of services by departments and agencies. We believe that the efforts of the Task Force are very significant and that it should receive the full and strong support of the Government.

Recommendation 28: We recommend that the Government place high priority on continued efforts to improve service to the public. Initiatives should include, among others:

(a) steps to ensure that action on inquiries or applications are taken within a reasonable time;

(b) efforts to provide "one window" service to persons dealing with several departments or agencies on a particular matter;

(c) a system to ensure that persons or bodies responsible for acting in any situation are clearly identified and easily accessible to the public; and

(d) training programs, incentives and job classifications for public employees that emphasize the importance of service to the public.

XI OVERLAP, DUPLICATION, AND CONFLICT OF REGULATORY REQUIREMENTS

There has been a dramatic growth in state intervention in all aspects of life and the economy at federal, provincial, and municipal levels of government in Canada. As might be expected, the use of regulations and regulatory schemes has also expanded at all levels. This development has become particularly pronounced in the post-World War II period, and especially in the 1960's and 1970's, when both federal and provincial governments have intervened aggressively in many social and economic areas.

One of the consequences of this increase in regulatory complexity has been greater overlap, duplication, and conflict between various federal requirements, and between federal and provincial requirements. When the private sector becomes involved in such situations, this may lead to frustration and hostility on its part. It may also lead to an increase in costs and delays when more than one regulatory scheme with different and, at times, conflicting criteria must be complied with. These difficulties may be inevitable in a federal system in which jurisdictional powers are divided between different orders of government. This does not mean, however, that the inevitability of such difficulties must be accepted. Our federal system is a dynamic one and is capable of adjustment and adaptation. This is not only true at the constitutional and institutional levels, but is also true at the departmental and private sector levels.

Although the Committee is convinced that the overlap, duplication, and conflict of regulatory requirements cause problems at both the federal and provincial levels of government, it has not received sufficient evidence in any particular sector to allow it to come to any firm conclusions as to what needs to be done. Instead, the Committee will, in this Part of its Report, set out some of the difficulties highlighted in testimony and submissions, as well as some of the solutions that have been proposed by witnesses and in briefs.

The Committee has been told of federal departmental conflicts involving environmental and fisheries legislation—it is possible to comply with one regulatory scheme while being in violation of the other. There also appears to be some difficulty as to who has jurisdiction over railway employees involved in a rail accident—is it the Canadian Transport Commission or the Department of Labour? Frequently, more than one department or agency will have responsibility for different aspects of a problem—the Committee has been told that in occupational health and safety, up to 13 different federal departments and agencies are involved.

The Committee has been told of multiple inspections by both federal and provincial departments of the same premises in the food production and processing industries. In the environmental protection area, inspectors from several federal and provincial departments visit the same plants at different times for related purposes. Not only is multiple inspection costly to governments, it also unnecessarily disrupts the operations of the private sector.

The requirement for multiple approvals by different departments at the federal level and at the federal and provincial levels of government has been vividly drawn to the Committee's attention. Many approvals of different aspects of the same project are required by virtue of different criteria under different procedures at various stages of the work.

In the area of food product labelling, packaging and advertising, the CRTC, the Department of Corporate and Consumer Affairs, the Department of Agriculture and the Department of Health and Welfare may have to give their approval. It is also possible that several provincial government departments may also become involved. In its brief to the Committee, a chemical processing company indicated that in order for it to obtain the necessary authorization to build a plant in Alberta, it had to obtain ten approvals at the federal level under nine statutes from seven departments and agencies, 44

approvals at the provincial level under 18 statutes from 24 departments, divisions and agencies, and 13 approvals at the municipal level under five statutes from five departments and offices.

These problems are especially serious for small and medium-sized businesses which, unlike large businesses, often do not have the financial and other resources required to absorb the added cost and delay caused by these hurdles. The requirement for multiple approvals not only delays the completion of an undertaking by the private sector, but also increases the costs that it must bear and that may be passed on to consumers and taxpayers.

Witnesses before the Committee offered a variety of solutions to these problems. Some advocated a re-allocation of overlapping jurisdictions. Others said that *ad hoc* arrangements, where interdepartmental and intergovernmental committees and task forces work with the private sector to resolve problems, is an effective approach that may merit further consideration. One witness recommended that leading legislation adopted by one jurisdiction be adopted by other jurisdictions so that some uniformity of laws will be achieved across Canada.

Where there are federal or federal/provincial conflicts, it has been proposed by several witnesses that a binding arbitration process be set up. Where projects requiring multiple approvals are undertaken, it has been proposed that a single-approval process or an approval coordinator be established—this submission to the Committee was made in the context of mega-projects. In other areas, federal-provincial interdelegation of administration and the adoption by reference of one jurisdiction's regulations by the other have been advocated before the Committee. These techniques have been successfully used in the areas of food marketing where provincial boards administer federal regulations; uranium mining safety where the federal government has by reference adopted Ontario provincial health and safety regulations which are administered by the provincial department; and in red meat inspection where federal inspectors act for both federal and most provincial departments.

Where a number of departments and agencies have some jurisdiction over a particular area of social or economic concern, the use of omnibus legislation has been presented as a possible solution. This recommendation to the Committee was made in the context of occupational health and safety where eight provinces have consolidated into omnibus statutes all aspects of this area that were previously administered by different departments under a number of statutes. The omnibus statute is then administered by either an independent commission or the appropriate provincial department.

One point made by virtually every witness appearing before the Committee and in many submissions received by it was that many of the problems of federal and federal/provincial overlap, duplication, and conflict can be resolved by good sense and cooperation. It would appear from the Committee's examination that negotiation, cooperation, and *ad hoc* arrangements have resolved many complex issues and greatly reduced friction. In a federal system it is inevitable that there will be conflicts and disagreements—it is important that these be resolved in the most expeditious and least costly ways possible.

Although the extent of the problem is unclear, it is apparent that overlap, duplication and conflict of regulatory requirements can cause major difficulties for the private sector. The Committee has heard serious complaints about the situation that exists in occupational health and safety, food labelling and advertising, and food production and processing.

Recommendation 29: We recommend that where overlap, duplication or conflict of regulatory requirements exist within the federal government or between federal and provincial jurisdictions, the government take action to reduce or eliminate the burden on the private sector. In particular, immediate action should be taken in the areas of occupational health and safety, food labelling and advertising, and food production and processing.

XII REFLECTIONS BY MEMBERS

A. In General

Our Committee was one of five appointed by the House of Commons on May 23, 1980. Each was called upon to act as a Task Force to study a specific topic and report thereon to the House by December 19, 1980. Since the Task Forces are a new type of Parliamentary committee, and because our own Report touches upon the need for parliamentary reform as part of regulatory reform, we felt it would be helpful to present a few thoughts on our own experience.

B. Staff

Our first and most critical challenge was to find competent professional staff. Our tight deadline meant they had to be established experts on regulation and regulatory reform; they also had to be sensitive to the needs of both the private and public sectors. Because we wanted workable recommendations that could be implemented immediately, staff had to have a practical as well as theoretical orientation. Above all, they had to be prepared to work long hours under high pressure in close cooperation with the Members. We were fortunate to find such individuals.

C. Defining The Subject Matter

After hiring staff, our first task was to narrow our field of inquiry to manageable proportions. Preliminary study and consultation with government officials and the private sector led us to conclude that the most pressing need was to focus on the process by which government departments and agencies formulate and implement regulations. We believed that if regulations could be made through an open, consultative process and if regulators could be held accountable, then we would have done much to help reduce the burden of regulation on the private sector.

D. Opinions Sought

An early decision was made that we should endeavour to tap the resources of the many people who are knowledgeable about regulatory reform in Canada. We felt as well that we could benefit from the reform experience of other countries including Australia, the United States and the United Kingdom. To obtain details of foreign reform, we relied heavily on written materials. We also sent staff members to consult with experts on narrowly-defined issues important to our work, and commissioned experts to report to us. These approaches allowed us to obtain expert opinion on precise questions at the least cost in both time and money.

We also felt that, as parliamentarians, we were in a unique position to obtain the views and opinions of Canadians in both the public and private sectors. We decided to do this by soliciting written briefs and conducting public hearings. To help focus responses on regulatory process, and within that area to the issues we initially felt to be most important, we decided to issue a Discussion Paper.

E. Discussion Paper

On August 7, 1980, the Committee published its Discussion Paper and held a press conference. The Discussion Paper contained 28 suggestions for reform, which were followed by a number of questions designed to elicit comments. It requested all interested parties to respond to us. Because of our deadline, we required that notification of intention to appear before the Committee be received by August 29, 1980 and written briefs by September 19, 1980. An open letter outlining our activities was mailed to more than 4,500 individuals and groups in the public and private sectors. We also gave wide public notice throughout Canada, and distributed more than 3,000 copies of our Discussion Paper.

F. Opinions Received

In spite of the tight deadlines we imposed, we received numerous written briefs and submissions. Our public hearings began on September 15, 1980 and continued through October and November. We heard from federal government departments and agencies, provincial governments, academics, individuals, and representatives from business, labour and a number of public interest groups.

Our hearings were held in Ottawa, Toronto, and Montreal. Since it would have been very costly to move the Committee and its support staff to other areas to hear a limited number of witnesses, we instead invited them to appear in Ottawa. In this way, considerable savings resulted, all witnesses were heard, and to our knowledge, these arrangements were satisfactory.

We were pleased with the responses to our Discussion Paper, especially in light of the short time available. Most commented favourably on the technique of circulating a discussion paper. In addition, individuals from both the public and private sectors who appeared before us were generally, we felt, quite open in sharing their problems and experiences with us. We were able to test our ideas and obtain new ones not found in the Discussion Paper. Their suggestions shaped much of the thinking contained in this Report.

We hope the burden imposed on those who responded will be offset in the future by a reduced burden of regulation on the private sector, and more effective regulatory practices for the public sector. We recommend the use of discussion papers followed by written submissions and hearings where complex issues such as ours require action.

G. How We Worked

Staff provided Members with background briefings, and prepared briefing notes on witnesses and submissions. In addition, staff suggested questions for our hearings and participated in the questioning of witnesses. We found these practices helpful.

Our Committee members were one New Democrat, two Progressive Conservatives and four Liberals, but we worked together in a nonpartisan manner. Strong and differing opinions of Members and staff were not the result of political bias, but rather of different backgrounds, perspectives, and concerns. The working relationship among Members and between Members and staff was informal, but positive.

We consider our own "process" of working together to have been worthwhile and productive. In analyzing why, a number of factors emerge:

—The smaller number of members (seven versus the usual twenty) gave each member the opportunity to develop and pursue a line of questioning.

—We were able to extend our hours and times of sitting, as we were not subject to the usual restriction of five meetings every two weeks.

—The complexity of the issues meant each Member had to develop expertise and play an important role.

—The short deadline focused our time and energy.

—Precluding substitution of Members enhanced the nonpartisan nature of our work, and obviated the need for new Members to "catch up". We do not feel our own work suffered when all Members could not attend meetings or hearings. Permitting even one Member to hear evidence also proved useful.

—Our professional and dedicated staff worked assiduously with all Members, individually and collectively. We recognize that our work would have been impossible without them. Nor could we

have completed our work without the calm organizational skills of our Clerk. The logistics of organizing meetings and hearings, scheduling witnesses, responding to inquiries, and preparing numerous reports all on time, were exceptionally demanding. His experience and knowledge are reflected in our Report.

H. Conclusion

We are convinced of the need for regulatory reform, and urge that the federal government give it high priority. Part of this reform, as we have indicated, will involve changing the rules and practices of Parliament so that all Members can better exercise their task of holding regulators accountable. Our goal is to reduce the burden of regulation on the private sector; we believe it can be done.

GLOSSARY

—Core Funding—funding for public interest groups that is not tied to a specified activity or project. Such funding allows public interest groups to maintain operations on an ongoing basis and to make their own decisions as to how resources should be employed.

—Cost-Benefit Analysis—an analytical tool that attempts to measure and compare, in monetary terms, the relevant social costs and benefits of a particular initiative or activity.

—Cost-Effectiveness Analysis—an analytical tool that measures, in monetary terms, the cost of achieving a certain objective or producing a given benefit. The objective or benefit is described in physical terms; no attempt is made to reduce it to a monetary value.

—Cost Awards—a reimbursement, either complete or partial, of the expenses incurred by a party in connection with an appearance in a legal proceeding. In the agency context, payment would normally be made by a regulated company to individuals or groups who had intervened in a proceeding. Payment is made at the direction of the agency.

—Free Rider Problem—the problem of eliciting the true willingness to pay for public goods. For example, during a hearing on telephone rate increases there is an incentive for individual telephone subscribers to disguise their true preferences and contribute little or nothing to any collective effort to fight against higher rates. Individuals can hope that others will be sufficiently motivated to ensure that the collective effort is successful. Each individual, therefore, has incentives to be a free rider and to enjoy benefits gained from the money and efforts of others.

—Impact Assessment—a term adopted by the Committee to describe an effort undertaken by government to consider the appropriateness of a regulatory initiative and to assess its likely consequences. An impact assessment would include a definition of the problem the regulation is aimed at, an identification of alternative solutions, a statement of the advantages and disadvantages of the particular regulatory initiative to be undertaken, and some consideration of the distributive effects of the proposed regulation.

—Policy Directive—a formal public statement articulating the Government's policy position on a given subject. Directives are made by the Governor in Council and are directed to and binding on the regulatory agency that has the authority to implement the policy.

—Program Evaluation—a comprehensive system for the evaluation of expenditure and regulatory programs that is administered by the Office of the Comptroller General. Evaluations, which are performed by the departments and agencies themselves, involve a consideration of whether a program makes sense in terms of present government policy and the current social and economic environment. They examine whether the objectives of the programs are being met, identify other important effects of the programs, and determine whether there are ways of achieving the objectives of programs, more effectively or efficiently. Evaluation takes place on a cycle so that each program is scrutinized every three to five years.

—Regulation—as it is employed in this Report, the term has two meanings—one broad and one narrow. Used in its narrow sense, "regulation" denotes a particular kind of statutory instrument as defined by the *Statutory Instruments Act*, S.C. 1970-71-72, c. 38, s. 2(1)(b). In the broad sense it is used as a generic term of fairly wide scope. The Economic Council of Canada has defined

regulation as "the imposition of constraints, backed by government authority, that are intended specifically to modify the economic behaviour of individuals in the private sector."

—Regulatory—an adjective which is used to describe something that relates to "regulation" in the broad sense of the word. (See "regulation" above.)

—Regulatory Budget—a technique for controlling and managing the costs associated with government regulatory activity. Under the budget system costs are defined to include the costs of administering and enforcing a regulatory program as well as the private sector's direct compliance costs. The government sets a ceiling on the costs that regulator activity can generate and allocates the total among different regulatory schemes. Regulators are then forced to adjust programs and set priorities within the constraints imposed by the budget.

—SEIA—an acronym for "Socio-Economic Impact Analysis". The SEIA program is a federal government program that requires sponsoring departments to prepare a sophisticated analysis of the costs, benefits and distributive effects of major new regulations in the fields of health, safety and fairness.

—Stop Order—an order that can be made by Cabinet during the course of a proceeding before an agency in the event of the initiation of a policy directive process bearing on the hearing. The order would have the effect of suspending proceedings until Cabinet either produced the policy directive or indicated that it had elected not to issue a directive.

—Sunset Clause—a provision that operates to require that, in order to ensure the continued operation of a regulatory program, some positive action be taken after a specified time. A true sunset clause terminates a govenrment's legal authority to carry out a regulatory activity after a given time. Less severe variations of the sunset concept simply lapse funding for a project or require that an evaluation be performed.

Submissions

Agencies Review Committee

Agriculture Canada

Agriculture Canada, Food Production and Inspection Branch

Air Transport Association

Anisman, Philip, York University

Association of Records Managers and Administrators

Bell Canada

Board of Trade Metropolitan Toronto

Brown-John, C. Lloyd

Business Committee on Regulatory Reform

Canadian Advertising Advisory Board

The Canadian Association of Broadcasters

The Canadian Bar Association

Canadian Business Equipment Manufacturers' Association

Canadian Cable Television Association

The Canadian Chamber of Commerce

The Canadian Chemical Producers' Association

Canadian Environmental Law Association

Canadian Federation of Independent Business

Canadian Fertilizers Institute

Canadian Food Processors Association

Canadian Gas Association

Canadian Labour Relations Board

The Canadian Life Insurance Association

The Canadian Manufacturers' Association

The Canadian Mental Health Association

The Canadian Micrographic Society

Canadian Nuclear Association

Canadian Pulp and Paper Association

Canadian Soft Drink Association

Canadian Standards Association

Canadian Telecommunications Carriers Associations

CNCP Telecommunications

Conseil d'administration d'Hydro-Québec et de la Société d'énergie de la Baie James

Consumer and Corporate Affairs, Department of

Consumers' Association of Canada

Costpro

Council of Forest Industries of British Columbia

Dow Chemical

Economic Council of Canada

Eglinton, G.C., Barrister

Enemark, Tex

Energy, Mines and Resources Canada

Environment Canada

Gaz Metropolitain, Inc.

General Motors of Canada

Grocery Products Manufacturers of Canada

Jordan, William A., York University

Justice, Department of

Kemball, Peter R.

La Chambre de Commerce de la Province de Québec

Law Reform Commission of Canada

Labour Canada

Lambert, Allen T.

Leclerc, Wilbrod, University of Ottawa

The Lord's Day Alliance of Canada

Maclean-Hunter Ltd.

Manga, Pran and Robert Broyles, University of Ottawa

Matte, Nicolas

Ministry of State for Economic Development

Motor Vehicle Manufacturers' Association

National Energy Board

National Farm Products Marketing Council

National Health and Welfare, Department of

PACE (Petroleum Association for Conservation of the Canadian Environment)

Prior, Michael, Alberta Environmental Centre

Public Archives Canada

The Public Interest Advocacy Centre

Public Service Alliance of Canada

The Railway Association of Canada

Retail Council of Canada

Restrictive Trade Practices Commission

The Royal Bank of Canada

Rubin, Ken

Sampson, John B.

Supply and Services Canada

Supply and Services Canada, Specifications Board

Standing Procedural Affairs Committee, Yukon

Standards Council of Canada

Stanbury, W. T.

Stelco Inc.

Study Group on Administrative Tribunals

Telesat Canada

Thomas, Paul, St. John University

TransCanada Telephone System

Transport Canada

Transport Labour Relations

Treasury Board Canada

Urban Development Institute Canada

Witnesses

The Honourable Donald Johnston, President of the Treasury Board

The Treasury Board Secretariat

The Office of the Comptroller General

Officials from the Department of Agriculture

Officials from the Canadian Radio-television and Telecommunications Commission

Officials from the Department of Labour

Officials from the Department of Transport

Officials from the Canadian Transport Commission

Officials from the Department of Consumer and Corporate Affairs

Officials from the National Energy Board

Officials from the Department of Energy, Mines and Resources

Officials from the Department of Environment

Officials from the National Farm Products Marketing Council

Officials from the Department of Communications

Officials from the Specifications Board

Officials from the Ministry of State for Economic Development

Officials from the Department of Agriculture

Mr. Peter Kemball

Mr. Tex Enemark

Canadian Food Processors Association

Consumers' Association of Canada

Canadian Cable Television Association

Retail Council of Canada

Mr. W. T. Stanbury

Canadian Association of Broadcasters

Canadian Soft Drink Association

TransCanada Telephone System

Telesat Canada

Dow Chemical of Canada

Canadian Chemical Producers' Association

Nova Scotia Task Force on Deregulation and Paper Burden

Business Committee on Regulatory Reform

Public Interest Advocacy Centre

Mr. Alan Gordon, Province of Ontario

Mr. Jerry Grafstein

Canadian Chamber of Commerce

Professor Mr. Hudson Janisch

The Canadian Manufacturers, Association

Canadian Business Equipment Manufacturers' Association

CNCP Telecommunications

The Royal Bank of Canada

Chamber of Commerce (Quebec)

Quebec Consumers' Association

Bell Canada

British Columbia Consumers' Association

Law Reform Commission of Canada

Canadian Labour Congress

Canadian Standards Association

Officials from the Department of Justice

Officials from the Department of National Health and Welfare

The Petroleum Association for Conservation of the Canadian Environment

Mr. Maxwell Cohen

Canadian Advertising Advisory Board

Miss J. V. Scott, Chairman, Immigration Appeal Board